# Sunshine Act Meetings

Federal Register
Vol. 50, No. 169
Friday, August 30, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS



1

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 9:30 a.m., Thursday, September 5, 1985.

**LOCATION:** Third Floor Hearing Room, 1111-18th Street, NW. Washington, D.C.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:** Commission Procedures.

The Commission and staff will consider internal procedures relating to Commission decisionmaking.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: August 27, 1985.

Sheldon D. Butts,

*Deputy Secretary.*

[FR Doc. 85-20924 Filed 8-28-85; 1:08 pm]

BILLING CODE 6355-01-M

2

**FEDERAL ELECTION COMMISSION**

[Federal Register No. 85-18947]

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 15, 1985, 10:00 a.m.

**CHANGE IN MEETING:** The open meeting scheduled for this date was canceled.

* * * * *

**DATE AND TIME:** Wednesday, September 4, 1985; 10:00 a.m.

**PLACE:** 1325 K Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance. Litigation. Audits. Personnel.

* * * * *

**DATE AND TIME:** Thursday, September 5, 1985, 10:00 a.m.

**PLACE:** 1325 K Street, NW., Washington, DC.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985-21
Lois Moore, on behalf of Consolidated Freightways, Inc.
Draft AO 1985-23
Judah C. Sommer, Goldman, Sachs & Co. and GSMMI Holdings, Inc.
Reclassification—Printing Officer
Reclassification—Special Assistant to the Staff Director 1987 Budget Request
Routine Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, 202-523-4065.

Mary W. Dove,

*Administrative Assistant.*

[FR Doc. 85-20896 Filed 8-28-85; 10:18 am]

BILLING CODE 6715-01-M

3

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Wednesday, September 4, 1985.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452 3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 27, 1985.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 85-20827 Filed 8-27-85: 4:14 pm.]

BILLING CODE 6210-01-M

4

**LEGAL SERVICES CORPORATION**

Committee on the Provisions for the Delivery of Legal Services Meeting Amendment of Agenda

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Published August 27, 1985, 85 FR 20502.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:00 a.m., Thursday, September 5, 1985.

**EXPLANATION OF CHANGE:** Item number three of the previously announced agenda, Case Service Reporting (CSR) System, will be amended to include a discussion of the goals and objectives of implementing performance measures as a potential component of a revised Case Service Reporting System.

**CONTACT PERSON FOR MORE INFORMATION:** Daniel M. Rathbun, Office of Field Services, (202) 272-4080.

Date issued: August 28, 1985.

D. Clifford Crook, III,

*Assistant to the President, Chief-of-Staff.*

[FR Doc. 85-20880 Filed 8-28-85; 9:39 am]

BILLING CODE 6820-35-M

5

**LEGAL SERVICES CORPORATION**

Board of Directors Meeting; Amendment of Agenda.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Published August 27, 1985, 50 FR 34793.

**PREVIOUS ANNOUNCED TIME AND DATE OF MEETING:** An executive session will be held at 7:30 p.m., Wednesday, September 4, 1985. The public portion of the meeting will commence at 11:00 a.m., Friday September 6, 1985, and continue until all official business is completed.

**EXPLANATION OF CHANGE:** Item number six of the previously announced agenda, Report of the Operations and Regulations Committee, will be amended to read as follows:

6. Discussion and Action on the Recommendations of the Committee on Operations and Regulations—45 CFR Part 1620.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas A. Bovard, Office of the General Counsel, (202) 272-4010.

Date issued: August 29, 1985.

D. Clifford Crook, III,

*Assistant to the President, Chief-of-Staff.*

[FR Doc. 85-20996 Filed 8-29-85; 9:52 am]

BILLING CODE 6820-35-M

federal register

Friday
August 30, 1985

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 20

**Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

## Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

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

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules; teal in September, in the contiguous United States; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special extended falconry seasons during 1985–86. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

**DATE:** Effective on August 30, 1985.

**FOR FURTHER INFORMATION CONTACT:** Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Widlife Service, Department of the Interior, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C., telephone 202-254-3207.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 14, 1985, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with comment periods ending June 20, July 15, and August 19, (later extended to August 22) 1985, respectively, for the 1985–86 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 4, 1985, the Service published in the **Federal Register** (50 FR 23459) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late-season frameworks. On July 5, 1985, the Service published for public comment in the **Federal Register** (50 FR 27638) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On July 26, 1985, the Service published in the **Federal Register** (50 FR 29706) a fourth document consisting of final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 13, 1985, the Service published a fifth document in the **Federal Register** (50 FR 32587) consisting of a proposed rulemaking dealing specifically with frameworks for late-season migratory bird hunting regulations. On August 21, 1985, the Service published a sixth document (50 FR 33737) consisting of a final rulemaking for the early-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1985–86 season. The final rule described here is the seventh in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special extended falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

### Nontoxic Shot Regulations

On February 12, 1985, the Service published in the **Federal Register** (50 FR 5759) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets can have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas. An amendment to the February 12, 1985, final rule, adding areas where nontoxic shot is required because lead shot used by waterfowl hunters in those areas poses a threat to bald eagles, was published in the **Federal Register** dated May 7, 1985 (50 FR 19178).

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

### NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

### Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] . . . by taken such action necessary to insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Subsequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, the Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

### Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985, (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analsis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

### Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

### Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985, (at 50 FR 30425).

### Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (50 FR 10276, March 14, 1985; 50 FR 23459, June 4, 1985; and 50 FR 27638, July 5, 1985), the Service published in the **Federal Register** on July 26, 1985, (50 FR 30424) final early season frameworks for Alaska, Puerto Rico, the Virgin Islands; and on August 21, 1985, (50 FR 33737) those for the contiguous United States and Hawaii. Copies of the final frameworks were also sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years, and benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 14, June 4, and July 5, 1985, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration have been given to all other relevant matters presented, certain section of Title 50, Chapter I, Subchapter B, Part 10, Subpart K, are amended as set forth below.

The rules that eventually will be promulgated for the 1985–86 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 704 et seq.) as amended.

### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

## PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712) unless otherwise noted.

2. Section 20.101 is revised to read as follows:

**§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.**

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico.*

| | Doves | Pigeons |
|---|---|---|
| Daily bag limit | 10 singly or in the aggregate of all permitted species. | 5 |
| Possession limit | 10 singly or in the aggregatge of all permitted species. | 5 |

Season dates: Sept. 7 to Nov. 5, 1985.
Shooting hours: One-half hour before sunrise to sunset daily.

*Restrictions:* Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove (*Tortola cardosantera*); white-winged dove (*Tortola aliblanca o cubanita*); mourning dove (*Tortola rabilarga o rabiche*); and scaly-naped pigeon (*Paloma turca o torcaz*).

### *Closed Areas*

No season is prescribed for doves and pigeons on Mona Island in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

No season is prescribed for doves and pigeons in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1, to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico.*

| | Ducks | Coots | Common moorhens (gallinules) | Common snipe |
|---|---|---|---|---|
| Daily bag limits | 4 | Closed | 6 | 6 |
| Possession limits | 8 | Closed | 12 | 12 |

Season dates: Nov. 9 to Dec. 10, 1985 and Feb. 1 to Feb. 23, 1986.

Shooting hours: One-half hour before sunrise until sunset daily.

*Restrictions:* No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); and purple gallinule (*Porphyrula martinica*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Pato rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columbia inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands.*

| | Zenaida dove | Scaly-naped pigeon | Ducks |
|---|---|---|---|
| Daily bag limits | 10 | 5 | 4 |
| Possession limits | 10 | 5 | 8 |

Season dates:

Zenaida dove and scaly-naped pigeon: Sept. 1 through Oct. 30, 1985.

Ducks only: Dec. 14, 1985, through Jan. 31, 1986.

Shooting hours: One half-hour before sunrise until sunset daily.

*Restrictions:* No open season is prescribed for ground or quail dove, or other pigeons in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Check Commonwealth Regulations for Additional Restrictions! EXT. 005 ...TWO READINGS... (PART 0, RULES AND REGS) A46AD0 EARL DOUGLAS MARTIN SR. 61556 J.054–999 F.12 A46AD0.005 %118.0

Note.—Local names for game birds: Zenaida dove (*Zenaida aurita*)—mountain dove; bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected); ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected); and scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

3. Section 20.102 is revised to read as follows:

**§ 20.102 Seasons, limits, and shooting hours for Alaska.**

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

## Open Seasons—Ducks, Geese, Cranes and Common Snipe

| Area | |
|---|---|
| Northern: State Game Mgmt. Units 11–13 and 17–26. | Sept. 1 to Dec. 16. |
| Gulf Coast: State Game Mgmt. Units 5–7, 9, 14–16, and Unimak Island. | Do. |
| Southeast: State Game Mgmt. Units 1–4. | Do. |
| Pribilof and Aleutian Islands: State Game Mgmt. Unit 10 except Unimak Island. | Oct. 8 to Jan. 22. |
| Kodiak: State Game Mgmt. Unit 8. | Do. |

DAILY BAG AND POSSESSION LIMITS

| Area | Ducks [1] | Geese [2] | Emperor geese | Brant | Common snipe | Sandhill cranes |
|---|---|---|---|---|---|---|
| Northern | 10–30 | 6–12 | 2–4 | 2–4 | 8–16 | ([3]) |
| Gulf Coast | 8–24 | 6–12 | 2–4 | 2–4 | 8–16 | 2–4 |
| Southeast | 7–21 | 8–12 | 2–4 | 2–4 | 8–18 | 2–4 |
| Pribilof and Aleutian Islands | 7–21 | 6–12 | 2–4 | 2–4 | 8–16 | 2–4 |
| Kodiak | 7–21 | 6–12 | 2–4 | 2–4 | 8–16 | 2–4 |

[1] In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species; scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers.

[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9, 14–16 and 18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is prohibited from September 1 through September 14. In Unit 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited.

[3] 2–4 in Unit 17; 3–6 in Units 11–13 and 18–26.

4. Section 20.103 is revised to read as follows:

**§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.**

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In all States except Alabama, Illinois, Tennessee, and Michigan:
- Daily bag limit ..... 12
- Possession limit ..... 24

In Illinois and Tennessee:
- Daily bag limit ..... 15
- Possession limit ..... 30

In Alabama:
- Daily bag limit ..... 15
- Possession limit ..... 15

In Michigan:
- Daily bag limit ..... 6
- Posession limit ..... 12

Shooting and hawking hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

| | |
|---|---|
| Seasons in: | |
| Alabama: | |
| North Zone: [1] | |
| 12 noon to sunset. | Sept. 14. |
| One-half hour before sunrise to sunset. | Sept. 15 to Oct. 26 and Dec. 14 to Dec. 30. |
| South Zone: [1] 12 noon to sunset. | Oct. 5 to Dec. 3. |
| Connecticut | Closed. |
| Delaware (12 noon to sunset). | Sept. 7 to Sept. 28 and Oct. 14 to Oct. 26 and Dec. 9 to Jan. 11. |
| Florida: [2] | |
| 12 noon to sunset | Oct. 5 to Oct 27. |
| One-half hour before sunrise to sunset. | Nov. 9 to Nov. 24 and Dec. 14 to Jan. 13. |
| Georgia: | |
| North Zone: [3] | |
| 12 noon to sunset. | Sept. 7. |
| One-half hour before sunrise to sunset. | Sept. 8 to Oct. 6 and Nov. 28 to Dec. 1 and Dec. 7 to Jan. 11. |
| South Zone: [3] | |
| 12 noon to sunset. | Sept. 28. |
| One-half hour before sunrise to sunset. | Sept. 29 to Oct. 27 to Nov. 28 and Dec. 1 and Dec. 7 to Jan. 11. |
| Illinois (12 noon to sunset. | Sept. 1 to Oct. 30. |
| Indiana (12 noon to sunset). | Sept. 1 to Oct. 30 and Nov. 28 to Dec. 7. |
| Kentucky: | |
| 11 a.m. to sunset | Sept. 1 to Oct. 31. |
| Sunrise to sunset | Nov. 30 to Dec. 8. |
| Louisiana: | |
| North Zone: [4] 12 noon to sunset. | Sept. 1 to Sept. 8 and Oct. 19 to Dec. 1 and Dec. 14 to Dec. 31. |
| South Zone: [4] 12 noon to sunset. | Oct. 19 to Dec. 1 and Dec. 14 to Jan. 8. |
| Maine | Closed. |
| Maryland: | |
| 12 noon to sunset | Sept. 2 to Oct. 26. |
| One-half hour before sunrise to sunset. | Nov. 15 to Nov. 23 and Dec. 23 to Dec. 28. |
| Massachusetts | Closed. |
| Michigan (one-half hour before sunrise to sunset): | |
| South of U.S. Highway 10. | Sept. 15 to Oct. 6. |
| Remainder of State | Closed. |
| Mississippi (One-half hour before sunrise to sunset). | Sept. 7 to Sept. 29 and Oct. 19 to Nov. 17 and Dec. 21 to Jan. 6. |
| New Hampshire | Closed. |
| New Jersey | Do. |
| New York | Do. |
| North Carolina (one-half hour before sunrise to sunset). | Sept. 2 to Oct. 9 and Nov. 25 to Nov. 30 and Dec. 21 to Jan. 15. |
| Ohio | Closed. |
| Pennsylvania: | |
| 12 noon to sunset | Sept. 2 to Oct. 19. |
| One-half hour before sunrise to sunset. | Nov. 2 to Nov. 23. |
| Rhode Island: | |
| 12 noon to sunset | Sept. 9 to Sept. 29. |
| Sunrise to sunset | Oct. 19. to Nov. 6 and Dec. 16 to Jan. 14. |
| South Carolina (one-half hour before sunrise to sunset). | Sept. 7 to Oct. 12 and Nov. 23 to Nov. 30 and Dec. 21 to Jan. 15. |
| Tennessee: | |
| 12 noon to sunset | Sept. 1. |
| One-half hour before sunrise to sunset. | Sept. 2 to Sept. 29 and Oct. 12 to Oct. 19 and Dec. 14 to Jan. 5. |
| Vermont | Closed. |
| Virginia: | |
| 12 noon to sunset | Sept. 2 to Oct. 28. |
| One-half hour before sunrise to sunset. | Dec. 23 to Jan. 4. |
| West Virginia: | |
| 12 noon to sunset | Sept. 2 to Nov. 2. |
| One-half hour before sunrise to sunset. | Dec. 24 to Dec. 31. |
| Wisconsin | Closed. |

[1] In Alabama the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

[2] In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

[3] In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border to Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County, north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

[4] In Louisiana, the North Zone is defined as that area lying north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell, and Interstate Highway 10 from Slidell to the Mississippi State line. The South Zone consists of the remainder of Louisiana.

(b) *Mourning Doves—Central Management Unit.*

| | |
|---|---|
| In Missouri: | |
| Daily bag limit | 10 |
| Possession limit | 20 |
| In Texas: | |
| Daily bag limit | 12 |
| Possession limit | 24 |
| In Arkansas, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Wyoming, and Montana: | |
| Daily bag limit | 15 |
| Possession limit | 30 |

Shooting and hawking hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

| | |
|---|---|
| Seasons in: | |
| Arkansas | Sept. 1 to Sept. 30 and Dec. 14 to Jan. 12. |
| Colorado | Sept. 1 to Oct. 15. |
| Iowa | Closed. |
| Kansas | Sept. 1 to Oct. 30. |
| Minnesota | Closed. |
| Missouri | Sept. 1 to Nov. 9. |
| Montana | Sept. 7 to Nov. 5. |
| Nebraska | Sept. 1 to Oct. 30. |
| New Mexico [1] | Sept. 1 to Sept. 30 and Dec. 1 to Dec. 30. |
| North Dakota | Sept. 1 to Oct. 30. |
| Oklahoma | Do. |
| South Dakota | Sept. 1 to Sept. 30. |
| Texas: [2] | |
| North Zone | Sept. 1 to Nov. 9. |
| Central Zone | Sept. 1 to Oct. 30 and Jan. 4 to Jan. 13. |
| South Zone | Sept. 20 to Nov. 12 and Jan. 4 to Jan. 19. |
| Wyoming | Sept. 1 to Oct. 15. |

[1] In New Mexico, the daily bag limit is 15 and the possession limit is 30 white winged and mourning doves, singly or in the aggregate of these species.

[2] In Texas the three zones are North, South and Central as follows:

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along

Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 at Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Central Zone—That portion of the State lying between the North and South Zones.

[3] In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and possession limit is 24, of which no more than 4 may be whitewings and 4 may be whitetips.

(c) *Mourning Doves—Western Management Unit.*

| | |
|---|---|
| In Washington: | |
| Daily bag limit | 10 |
| Possession limit | 20 |
| In Arizona: | |
| Daily bag limit | 12 |
| Possesion limit | 24 |
| In California, Idaho, Nevada, Oregon, and Utah: | |
| Daily bag limit | 15 |
| Possession limit | 30 |

Shooting and hawking hours: One-half hour before sunrise until sunset.

**Check State Regulations for Additional Restrictions, Including Area Descriptions**

Seasons in:

| | |
|---|---|
| Arizona [1] | Sept. 1 to Sept. 22 and Nov. 23 to Jan. 9. |
| California [2] | Sept. 1 to Oct. 15 and Nov. 18 to Nov. 30. |
| Idaho | Sept. 1 to Oct. 30. |
| Nevada [2] | Do. |
| Oregon | Sept. 1 to Sept. 30. |
| Utah | Sept. 2 to Sept. 30. |
| Washington | Sept. 1 to Sept. 15. |

[1] In Arizona during September 1 through 22 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 23 through January 9, the bag and possession limits are 12 and 24 mourning doves, respectively.

[2] In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves, singly or in the aggregate of these species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

**Notice.**—Hawaii—Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

**Check State Regulations for Additional Restrictions, Including Area Descriptions**

| Seasons in— | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Poss. |
| Arizona (Statewide) | Sept. 1 to Sept. 22 | [1]6 | [1]12 |
| California: | | | |
| Counties of Imperial, Riverside, and San Bernardino. | Sept. 1 to Oct. 15 and Nov. 16 to Nov. 30. | [2]10 | [2]20 |
| Remainder of State | Closed | | |
| Nevada: | | | |
| Counties of Clark and Nye. | Sept. 1 to Oct. 30 | [2]10 | [2]20 |
| Remainder of State | Closed | | |
| New Mexico | Sept. 1 to Sept. 30 and Dec. 1 to Dec. 30. | [3]15 | [3]30 |
| Texas: | | | |
| Special white-winged dove season. | Closed | | |

See mourning dove regulations.

[1] In Arizona during September 1 through 22 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

[2] In designated counties of California and Nevada, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

[3] In New Mexico the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(e) *Band-tailed Pigeons.*

Shooting and hawking hours: One-half hour before sunrise until sunset.

**Check State Regulations for Additional Restrictions, Including Area Descriptions**

| Seasons in— | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Poss. |
| Arizona [1] | Oct. 11 to Nov. 9 | 5 | 10 |
| California: | | | |
| Counties of Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity. | Sept. 28 to Oct. 27 | 5 | 5 |
| Remainder of State | Dec. 14 to Jan. 12 | 5 | 5 |
| Colorado: In all lands west of U.S. Interstate 25 and Small Game Management Units 80, 81, 82 and 83. | Sept. 1 to Sept. 30 | 5 | 10 |
| Nevada: [1] Carson City, churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Washoe, and Storey Counties only. | do | 5 | 5 |
| New Mexico: | | | |
| North Zone [2] | Sept. 1 to Sept. 20 | 5 | 10 |
| South Zone [2] | Oct. 1 to Oct. 20 | 5 | 10 |
| Oregon | Sept. 1 to Sept. 30 | 5 | 5 |
| Utah | Sept. 2 to Sept. 30 | 5 | 10 |
| Washington | Sept. 1 to Sept. 30 | 5 | 5 |

[1] Each hunter must have for Arizona a special bird permit stamp issued by the State and for Nevada a special permit issued by the State.

[2] In New Mexico the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is defined as that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

## § 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

| | Rails (Sora and Virginia) | Rails (Clapper and King) | Woodcock | Common snipe |
|---|---|---|---|---|
| Daily bag limit | [1]25 | See footnote [4] | [2]5 | 8 |
| Possession limit | [1]25 | do | [3]10 | 16 |

Shooting and hawking hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.
Check State regulations restrictions, including area descriptions.

**Seasons in the Atlantic Flyway**

| | Rails (Sora and Virginia) | Rails (Clapper and King) | Woodcock | Common snipe |
|---|---|---|---|---|
| Connecticut | Sept. 2 to Nov. 9 | Sept. 2 to Nov. 9 | Oct. 19 to Dec. 2 | Oct. 19 to Dec. 2. |
| Delaware | do | do | Nov. 18 to Jan. 1 | Nov. 18 to Jan. 31. |
| Florida | Sept. 1 to Nov. 9 | Sept. 1 to Nov. 9 | Dec. 14 to Jan. 27 | Nov. 2 to Feb. 16. |
| Georgia | Sept. 14 to Nov. 22 | Sept. 14 to Nov. 22 | Nov. 30 to Jan. 13 | Nov. 29 to Feb. 28. |
| Maine | Sept. 1 to Nov. 9 | Closed | Oct. 1 to Nov. 14 | Sept. 1 to Dec. 16. |
| Maryland | Sept. 2 to Nov. 9 | Sept. 2 to Nov. 9 | Oct. 21 to Dec. 4 | Oct. 1 to Jan. 15. |
| Massachusetts | do | Closed | Deferred | Sept. 2 to Dec. 16. |
| New Hampshire | Closed | do | Oct. 1 to Nov. 14 | Oct. 1 to Dec. 4. |
| New Jersey: [4] | | | | |
| North Zone | Sept. 2 to Nov. 9 | Sept. 2 to Nov. 9 | Deferred | Deferred. |
| South Zone | do | do | do | Do. |

| | Rails (Sora and Virginia)[1] | Rails (Clapper and King)[2] | Woodcock[3] | Common snipe |
|---|---|---|---|---|
| New York:[4] | | | | |
| Long Island | Closed | Closed | Oct. 1 to Nov. 14 | Closed. |
| Remainder of State | Sept. 1 to Nov. 9 | do | do | Sept. 1 to Dec. 16. |
| North Carolina | Sept. 23 to Nov. 30 | Sept. 23 to Nov. 30 | Nov. 23 to Jan. 6 | Nov. 14 to Feb. 28. |
| Pennsylvania | Sept. 2 to Nov. 9 | Closed | Oct. 19 to Nov. 9 | Oct. 19 to Dec. 14. |
| Rhode Island | Sept. 15 to Nov. 23 | Sept 15 to Nov. 23 | Oct. 19 to Dec. 2 | Sept. 15 to Dec. 7 and Dec. 16 to Jan. 7. |
| South Carolina | Sept. 13 to Oct. 18 and Nov. 11 to Dec. 14. | Sept. 13 to Oct. 18 and Nov. 11 to Dec. 14. | Nov. 28 to Jan. 11 | Nov. 14 to Feb. 28. |
| Vermont | Sept. 28 to Dec. 6 | Closed | Oct. 1 to Nov. 14 | Sept. 28 to Dec. 6. |
| Virginia | Sept. 9 to Nov. 16 | Sept. 9 to Nov. 16 | Oct. 28 to Nov. 19 and Dec. 25 to Jan. 15. | Oct. 17 to Jan. 31. |
| West Virginia | Sept. 2 to Nov. 9 | Closed | Oct. 12 to Nov. 23 | Sept. 2 to Dec. 17. |
| **Seasons in the Mississippi Flyway** | | | | |
| Alabama (5) | Nov. 12 to Jan. 20 | Nov. 12 to Jan. 20 | Nov. 28 to Jan. 31 | Nov. 14 to Feb. 28. |
| Arkansas | Sept. 1 to Nov. 9 | Closed | Nov. 9 to Dec. 13 and Jan. 11 to Feb. 9. | Sept. 14 to Sept. 22 and Nov. 23 to Feb. 28. |
| Illinois | do | do | Oct. 1 to Dec. 4 | Sept. 7 to Dec. 22. |
| Indiana | do | do | Sept. 21 to Sept. 27 and Oct. 5 to Dec. 1. | Sept. 1 to Dec. 16. |
| Iowa[6] | Sept. 7 to Nov. 15 | do | Sept. 14 to Nov. 17 | Sept. 7 to Dec. 22. |
| Kentucky | Deferred | do | Oct. 1 to Dec. 4 | Oct. 1 to Dec. 4. |
| Louisiana | Sept. 21 to Sept. 29 and Nov. 9 to Jan. 8. | Sept. 21 to Sept. 29 and Nov. 9 to Jan. 8. | Dec. 7 to Feb. 9 | Nov. 9 to Feb. 23. |
| Michigan[7] | Sept. 15 to Nov. 14 | closed | Sept. 15 to Nov. 14 | Sept. 15 to Nov. 14. |
| Minnesota | Sept. 1 to Nov. 4 | do | Sept. 1 to Nov. 4 | Sept. 1 to Nov. 4. |
| Mississippi | Oct. 19 to Dec. 27 | Oct. 19 to Dec. 27 | Dec. 21 to Feb. 23 | Nov. 9 to Feb. 23. |
| Missouri | Sept. 1 to Nov. 9 | Closed | Oct. 15 to Dec. 16 | Sept. 1 to Dec. 16. |
| Ohio | Sept. 2 to Nov. 9 | do | Sept. 27 to Nov. 30 | Sept. 2 to Nov. 30 and Dec. 9 to Dec. 25. |
| Tennessee | Deferred | do | Oct. 12 to Nov. 17 and Feb. 1 to Feb. 28. | Nov. 19 to Feb. 28. |
| Wisconsin | do | do | Sept. 14 to Nov. 17 | Deferred. |
| **Seasons in the Central Flyway** | | | | |
| Colorado[8] | Sept. 1 to Nov. 9 | Closed | Closed | Sept. 1 to Dec. 1. |
| Kansas | Sept. 14 to Nov. 22 | do | Oct. 1 to Dec. 4 | Sept. 14 to Dec. 29. |
| Montana[8] | Closed | do | Closed | Deferred. |
| Nebraska[9] | Sept. 1 to Nov. 9 | do | Sept. 15 to Nov. 18 | Sept. 1 to Dec. 15. |
| New Mexico[8] | Sept. 7 to Nov. 15 | do | Closed | Sept. 7 to Dec. 8. |
| North Dakota | Closed | do | do | Sept. 28 to Nov. 24. |
| Oklahoma | Sept. 1 to Nov. 9 | do | Nov. 28 to Jan. 30 | Oct. 20 to Feb. 3. |
| South Dakota[10] | Closed | do | Closed | Sept. 1 to Oct. 31. |
| Texas | Sept. 1 to Nov. 9 | Sept. 1 to Nov. 9 | Deferred | Deferred. |
| Wyoming (8) | Sept. 21 to Nov. 29 | Closed | Closed | Sept. 21 to Jan. 5. |
| **Seasons in the Pacific Flyway** | | | | |
| Colorado (8) | Sept. 1 to Nov. 9 | Closed | Closed | Sept. 1 to Dec. 1. |
| Montana (8) | Closed | do | do | Deferred. |
| New Mexico (8) | Sept. 7 to Nov. 15 | do | do | Sept. 7 to Dec. 8. |
| Wyoming (8) | Sept. 21 to Nov. 29 | do | do | Sept. 21 to Dec. 22. |

[1] The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

[2] In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

[3] In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

[4] For description of zones or management units within a State, see State regulations.

[5] In Alabama, the rail limits are 15 daily and 15 in possession.

[6] In Iowa, the rail limits are 15 daily and 25 in possession. Shooting hours are sunrise to sunset.

[7] See State regulations for listing of certain Great Lakes waters where the season is open concurrently with the duck season.

[8] The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

[9] In Nebraska, the rail limits are 10 daily and 20 in possession.

[10] In South Dakota, the snipe limits are 5 daily and 15 in possession.

NOTE.—Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

NOTE.—No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway. Consult waterfowl regulations to be published later for information concerning the snipe season in Montana.

6. Section 20.105 is amended by revising paragraphs (a)–(c) and by amending paragraph (d) to read as follows:

**§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules.**

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.* (1) An open season for taking scoter, eider, and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1985, and January 20, 1986, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting and hawking hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

| | |
|---|---|
| Seasons in: | |
| Connecticut | Sept. 20 to Jan. 4. |
| Delaware | Sept. 21 to Jan. 4. |
| Georgia | Deferred. |
| Maine | Oct. 1 to Jan. 15. |
| Maryland | Deferred. |
| Massachusetts | Do. |
| New Hampshire | Sept. 15 to Dec. 30. |
| New Jersey | Deferred. |
| New York (Long Island only). | Sept. 23 to Jan. 7. |
| North Carolina | Deferred. |
| Rhode Island | Do. |
| South Carolina | Do. |
| Virginia | Do. |

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

Note.—States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* September season: An open season for teal ducks (blue-winged, green-winged, and cinnamon) is prescribed according to the following table in those areas which are described, delineated, and designated in the hunting regulations of the following States:

| | |
|---|---|
| Daily bag limit | 4 |
| Possession limit | 8 |

Shooting and hawking hours: Sunrise until sunset daily.

Check State Regulations for Additional Restrictions

| | |
|---|---|
| Seasons in the Mississippi Flyway: | |
| Alabama [1] | Sept. 14 to Sept. 22. |
| Arkansas | Sept. 14 to Sept. 22. |
| Illinois [2] | Sept. 7 to Sept. 15. |
| Indiana [3] | Do. |
| Louisiana | Sept. 21 to Sept. 29. |
| Mississippi | Sept. 14 to Sept 22. |
| Missouri | Do. |
| Ohio | Sept. 6 to Sept. 14 |
| Seasons in the Central Flyway: | |
| Colorado [4 5] | Sept. 7 to Sept. 15. |
| Kansas | Sept. 14 to Sept. 22. |
| New Mexico [5] | Sept. 7 to Sept. 15. |
| Oklahoma | Do. |
| Texas | Sept. 14 to Sept. 22. |

[1] In Alabama, shooting hours in Mobile Delta north of the causeway and south of the L&N Railroad are sunrise to 12 noon.

[2] In Illinois the shooting hours are from 7 a.m.–4 p.m. local time by State regulation.

[3] In Indiana, the Kankakee and LaSalle Fish and Wildlife Areas, and portions of Atterbury, Hovey Lake, Jasper-Pulaski and Pigeon River Fish and Wildlife Areas are closed to teal hunting by State regulations.

[4] Only in Lake and Chaffee Counties, and that portion of Colorado east of U.S. Highway-Colorado State Highway 85 from the Wyoming State line to its intersection with U.S. Interstate Highway 25 to the New Mexico State line.

[5] Central Flyway portion only.

(c) *Common Moorhens and Purple Gallinules.*

| | |
|---|---|
| Daily bag limit. | 15 singly or in the aggregate of the two species. |
| Possession limit. | 30 singly or in the aggregate of the two species. |

Shooting and hawking hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

| | |
|---|---|
| Seasons in the Atlantic Flyway: | |
| Connecticut | Sept. 2 to Nov. 9. |
| Delaware | Do. |
| Florida [1] | Sept. 1 to Nov. 9. |
| Georgia | Oct. 4 to Oct. 6 and Nov. 28 to Nov. 30 and Dec. 7 to Jan. 19. |
| Maine | Sept. 1 to Nov. 9. |
| Maryland | Sept. 2 to Nov. 9. |
| Massachusetts | Deferred. |
| New Hampshire | Closed. |
| New Jersey | Sept. 2 to Nov. 9. |
| New York: | |
| Long Island | Closed. |
| Remainder of State | Sept. 1 to Nov. 9. |
| North Carolina | Sept. 23 to Nov. 30. |
| Pennsylvania | Sept. 2 to Nov. 9. |
| Rhode Island | Sept. 15 to Nov. 23. |
| South Carolina | Sept. 13 to Oct. 18 and Nov. 11 to Dec. 14. |
| Vermont | Sept. 28 to Dec. 6. |
| Virginia | Deferred. |
| West Virginia | Do. |
| Seasons in the Mississippi Flyway: | |
| Alabama [2] | Nov. 12 to Jan. 20. |
| Arkansa | Sept. 1 to Nov. 9. |
| Illinois | Closed. |
| Indiana | Sept. 1 to Nov. 9. |
| Iowa | Closed. |
| Kentucky | Deferred. |
| Louisiana | Sept. 21 to Sept. 29 and Nov. 9 to Jan. 6. |
| Michigan | Deferred. |
| Minnesota | Do. |
| Mississippi | Oct. 19 to Dec. 27. |
| Missouri | Closed. |
| Ohio | Sept. 2 to Nov. 9. |
| Tennessee | Deferred. |
| Wisconsin | Do. |
| Seasons in the Central Flyway: | |
| Colorado [3] | Closed. |
| Kansas | Do. |
| Montana [3] | Deferred. |
| Nebraska | Closed. |
| New Mexico [3] | Oct. 15 to Dec. 23. |
| North Dakota | Closed. |
| Oklahoma | Sept. 1 to Nov. 9. |
| South Dakota | Closed. |
| Texas | Sept. 1 to Nov. 9. |
| Wyoming [3] | Closed. |
| Seasons in the Pacific Flyway: | |
| All States and portions thereof. | Deferred. |

[1] The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

[2] In Alabama, the gallinule limits are 15 daily and 15 in possession.

[3] Seasons apply to Central Flyway portion of State only.

Note.—States with deferred seasons may select common moorhen and purple gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

**Atlantic Flyway**

*Flywaywide Restrictions*

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| * * * | | * | |
| Florida: | | | |
| Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit. | Sept. 21 to Sept. 25 | 4 | 8 |
| * * * | | * | |

**Mississippi Flyway**

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| * * * | | * | |
| Iowa: | | | |
| Ducks | Sept. 21 to Sept. 23 | (1) | (1) |
| * * * | | * | |
| Kentucky: | | | |
| Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit. | Sept. 11 to Sept. 15 | 4 | 8 |
| * * * | | * | |
| Tennessee: | | | |
| Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit. | Sept. 14 to Sept. 18 | 4 | 8 |
| * * * | | * | |

[1] Limits to conform to those set for the regular season.

* * * * *

7. Section 20.106 is amended by revising the Central and Pacific Flyways provisions to read as follows:

**§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.**

*Central Flyway:* Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes, and with shooting hours from one-half hour before sunrise until sunset in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley) the season has been deferred.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 26, 1985, through January 26, 1986.

(c) In Oklahoma (that portion west of I–35) the season has been deferred.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to Canada; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are Sept. 7–Nov. 3, 1985; in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are Sept. 7–Sept. 27, 1985.

(f) In Montana (the Central Flyway portion except that area south of I–95 and west of the Bighorn River), the season has been deferred.

(g) In South Dakota, the inclusive season dates are September 28 through November 3, 1985.

(h) In Wyoming, in Compbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 21 through November 17, 1985.

Each hunter particpating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting, a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

*Pacific Flyway:* In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season has been deferred.

In Wyoming's sandhill crane-Canada goose hunt areas (Bear River drainage and Star Valley of Lincoln County), hunting is by State permit only with limits of 2 sandhill cranes and 3 Canada geese per season. The inclusive season dates are September 1–2; September 7–8; and September 14–15.

* * * * *

8. Section 20.109 is revised as follows:

**§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.**

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

| | |
|---|---|
| Daily bag limit. | 3 singly or in the aggregate. |
| Possession limit. | 6 singly or in the aggregate. |

These limits apply during both regular hunting seasons and extended falconry seasons. Hawking hours: One-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

| | |
|---|---|
| *Atlantic Flyway* | |
| Florida: | |
| Mourning doves and white-winged doves. | Sept. 28 to Dec. 6. |
| Woodcock | Oct. 26 to Dec. 9. |
| Snipe | Nov. 2 to Feb. 16. |
| Ducks, mergansers, and coots. | Oct. 8 to Nov. 22. |
| Common moorhens and rails. | Sept. 28 to Dec. 6. |
| Maryland: | |
| Mourning doves | Sept. 2 to Oct. 26 and Nov. 25 to Jan. 5. |
| Rails | Sept. 2 to Dec. 17. |
| Woodcock | Oct. 21 to Jan. 31. |
| Snipe | Oct. 1 to Jan. 15. |
| Common moorhens and purple gallinules. | Sept. 2 to Dec. 17. |
| Ducks, coots, geese | Deferred. |
| Pennsylvania: | |
| Mourning doves | Sept. 2 to Dec. 14. |
| Ducks, mergansers, coots and geese. | Oct. 8 to Jan. 13. |
| Virginia: | |
| Woodcock and snipe | Oct. 17 to Jan. 31. |

| | |
|---|---|
| Mourning doves and rails. | Sept. 2 to Nov. 30 and Dec. 19 to Jan. 4. |
| *Mississippi Flyway* | |
| Illinois: | |
| Mourning doves, woodcock and rails. | Sept. 1 to Dec. 16. |
| Snipe | Sept. 7 to Dec. 22. |
| Teal | Sept. 7 to Sept. 15. |
| Ducks, mergansers, and coots. | Oct. 8 to Jan. 13. |
| Indiana: | |
| Woodcock | Sept. 1 to Sept. 20. |
| Mourning doves | Oct. 31 to Nov. 27. |
| Iowa: | |
| Rails | Sept. 7 to Nov. 15. |
| Snipe | Sept. 7 to Dec. 22. |
| Woodcock | Sept. 14 to Nov. 17. |
| Geese | Sept. 28 to Jan. 6. |
| Ducks and coots | Deferred. |
| Michigan: | |
| Woodcock, snipe, and rails. | Sept. 1 to Dec. 16. |
| Common moorhens, purple gallinules and geese. | Sept. 28 to Jan. 12. |
| Ducks | Deferred. |
| Minnesota: | |
| Woodcock, snipe, and rails. | Sept. 1 to Dec. 16. |
| Ducks, mergansers, coots, moorhens, purple gallinules and geese. | Deferred. |
| Mississippi: | |
| Ducks, mergansers and coots. | Nov. 2 to Dec. 13. |
| Mourning doves | Sept. 30 to Oct. 13 and Nov. 22 to Dec. 13. |
| Missouri: Mourning doves. | Sept. 1 to Dec. 16. |
| Wisconsin: | |
| Rails, woodcock, snipe, common moorhens and purple gallinules. | Do. |
| Ducks, mergansers, and coots. | Oct. 8 to Jan. 13. |
| *Central Flyway* | |
| New Mexico:[1] | |
| Mourning doves and white-winged doves. | Sept. 1 to Nov. 6 and Nov. 22 to Dec. 30. |
| Band-tailed pigeons | Sept. 1 to Nov. 30. |
| Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties. | Oct. 13 to Jan. 27. |
| Ducks, mergansers and coots. | Oct. 15 to Jan. 13. |
| Common moorhens and purple gallinules. | Oct. 15 to Jan. 19. |
| Canada and white-fronted geese. | Do. |
| Snow, blue, and Ross' geese. | Nov. 15 to Feb. 28. |
| Texas: | |
| Mourning doves (statewide). | Sept. 1 to Nov. 30 and Jan. 4 to Jan. 19. |
| Rails, common moorhens and purple gallinules. | Sept. 1 to Dec. 16. |
| White-winged doves | Sept. 1 to Nov. 30 and Jan. 4 to Jan. 19. |
| Wyoming: | |
| Mourning doves | Sept. 1 to Oct. 15. |
| Snipe and rails | Sept. 21 to Nov. 29. |
| *Pacific Flyway* | |
| Idaho: Ducks and geese | Deferred. |
| New Mexico:[1] | |
| Mourning doves and white-winged doves. | Sept. 1 to Nov. 6 and Nov. 22 to Dec. 30. |
| Band-tailed pigeons | Sept. 1 to Nov. 30. |
| Ducks, mergansers and coots. | Oct. 8 to Jan. 13. |
| Geese | Oct. 5 to Jan. 19. |
| Common moorhens and purple gallinules. | Do. |
| Oregon: Mourning doves. | Sept. 1 to Dec. 16. |
| Utah: Mourning doves | Sept. 2 to Sept. 30. |
| Wyoming: | |
| Mourning doves | Sept. 1 to Oct. 15. |
| Snipe and rails | Sept. 21 to Nov. 29. |

[1] In New Mexico, the aggregate bag and possession limits of all species are 3 and 6, respectively.

Note.—See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Dated: August 21, 1985.

**P. Daniel Smith,**

*Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85-20391 Filed 8-29-85; 8:45 am]

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federal register

Friday
August 30, 1985

# Part III

# Department of Labor

## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

## DEPARTMENT OF LABOR

## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

### Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

### New General Wage Determination Decisions

Arkansas:
AR85–4030
AR85–4036

### Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

| | |
|---|---|
| California: CA84–5022 | Oct. 5, 1984. |
| Maryland: MD85–3041 | July 25, 1985. |
| New Jersey: NJ85–3031 | Aug. 2, 1985. |
| North Dakota: ND84–5032 | Oct. 19, 1984. |
| Oregon: OR85–5030 | June 28, 1985. |
| Pennsylvania: | |
| PA84–3035 | Sept. 21, 1984. |
| PA84–3037 | Oct. 5, 1984. |
| PA84–3049 | Dec. 21, 1984. |
| PA85–3017 | Apr. 5, 1985. |
| PA85–3037 | Aug. 9, 1985. |
| Virginia: | |
| VA85–3020 | Apr. 6, 1985. |
| VA84–3006 | July 6, 1984. |
| VA85–3025 | May 3, 1985. |
| Wisconsin: | |
| WI83–2078 | Oct. 7, 1983. |
| WI84–5038 | Oct. 19, 1984. |

### Supersedeas Decisions to General Wage Determination Decisions

| | |
|---|---|
| Louisiana: LA84–4008 (LA85–4029) | Feb. 17, 1984. |

Signed at Washington, D.C. this 23rd day of August 1985.

**James L. Valin,**

*Assistant Administrator.*

**BILLING CODE 4510–22–M**

NEW DECISION

STATE: ARKANSAS COUNTY: WASHINGTON

DECISION NO. AR85-4036 DATE: Date of Publication

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four (4) stories).

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| BRICKLAYERS | $ 9.00 | |
| CARPENTERS | 7.92 | |
| CEMENT MASONS | 7.67 | |
| ELECTRICIANS | 9.51 | |
| GLAZIERS | 7.60 | |
| IRONWORKERS | 6.87 | |
| LABORERS (General) | 5.23 | |
| Mason Tenders | 5.67 | |
| Plasterers Tender | 7.45 | |
| PAINTERS | 8.00 | |
| PLASTERERS | 11.22 | |
| PLUMBER & PIPEFITTERS | 11.46 | 1.14 |
| ROOFERS | 7.50 | |
| SHEET METAL WORKERS | 7.51 | |
| TILE SETTERS | 10.00 | |
| TRUCK DRIVERS | 6.05 | 12% |
| POWER EQUIPMENT OPERATORS: | | |
| Asphalt Finishing | 6.15 | 12% |
| Asphalt Pavers | 6.05 | 12% |
| Asphalt Rakers | 6.39 | |
| Asphalt Dist. Operators | 5.82 | 11% |
| Bulldozer Operator | 5.95 | 16% |
| Backhoe Operator | 6.65 | |
| Crane Operator | 6.87 | |
| Roller Operator | 6.52 | |
| Motor Patrol Operator | 6.88 | |
| Foundation Drill Op. | 7.29 | |
| Scarpers | 5.75 | 15% |

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii).

(2)

NEW DECISION

STATE: ARKANSAS COUNTY: SEBASTIAN

DECISION NO. AR85-4030 DATE: Date of Publication

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four (4) stories).

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| BOILERMAKERS | $16.125 | $2.95 |
| BRICKLAYERS | 13.50 | .85 |
| CARPENTERS | 10.14 | |
| Millwrights | 12.29 | 1.59 |
| CEMENT MASONS | 12.75 | .63 |
| ELECTRICIANS | 14.79 | 1.00+ 8.75% |
| Cable splicers | 15.04 | 1.00+ 8.75% |
| GLAZIERS | 8.63 | |
| IRONWORKERS | 10.48 | 1.51 |
| LABORERS: | | |
| Construction Laborers | 6.51 | .98 |
| Mason Tenders | 6.66 | 1.45 |
| METAL BUILDING ASSEMBLER | 7.67 | .70 |
| PAINTERS: | | |
| Brush | 7.92 | |
| Spray | 10.00 | |
| PLASTERERS | 14.20 | |
| Plumbers & Pipefitters: | | |
| Commercial buildings, schools, colleges, universities, motels, hotels, banks, all two (2) stories and under, shopping centers super-markets, malls, fast foods, theater, and churches, ware-houses, one (1) story, industrial maintenance industrial plant modifications, hospitals and hospital additions, one (1) and two (2) stories. | 11.00 | 1.65 |
| All other work | 13.56 | 1.69 |
| ROOFERS | $11.91 | $ .30 |
| SHEET METAL WORKERS | 12.58 | 2.02+ 3% |
| SPRINKLER FITTERS | 14.57 | 3.38 |
| TILE SETTERS | 11.00 | |
| TILE FINISHERS | 7.00 | |
| POWER EQUIPMENT OPERATORS: | | |
| Backhoe | 13.18 | 1.40 |
| Bulldozer | 12.56 | 1.40 |
| Crane | 13.00 | |
| Scraper | 12.56 | 1.40 |

Welders: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

(3)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. CA84-5022 - Mod. #12 (49 FR 39416 - October 5, 1984) Alameda, Alpine, Amador, etc., Counties, California | | |
| Change: | | |
| Carpenters: | | |
| Area 1: | | |
| Carpenters | $21.21 | $6.455 |
| Hardwood Floorlayers: Power Saw Operators: Saw Filers; Shinglers; Steel Scaffold Erectors and Steel Shoring | 21.36 | 6.455 |
| Millwrights | 22.11 | 7.855 |
| Piledrivers: Bridge, Wharf and Dock Builders | 19.38 | 9.715 |
| Area 2: | | |
| Carpenters | 18.58 | 6.455 |
| Hardwood Floorlayers; Power Saw Operator; Saw Filers; Shingler; Steel Scaffold Erectors and Steel Shoring | 18.73 | 6.455 |
| Millwrights | 19.48 | 7.855 |
| Piledriver; Bridge, Wharf and Dock Builders | 19.38 | 9.715 |
| Electricians: | | |
| Area 10: | | |
| Electrician | 15.00 | 6.71+3% |
| Cable Splicer | 16.88 | 6.71+3% |
| Residential Electrician | 7.50 | 4.64+4% |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. MD85-3041 MOD. #2 (50 FR 30587-July 25, 1985) ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND (Building and Heavy Construction) | | |
| HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construction Only) | | |
| CHANGE: CARPENTERS, SOFT FLOOR LAYERS, MILLWRIGHTS, PILEDRIVERS, DIVERS AND DIVER'S TENDERS | | |
| Zone 1 | | |
| Divers | 21.21 | 2.08 |
| Diver's Tenders | 16.85 | 2.08 |
| Zone 2 | | |
| Carpenters, soft floor layers, resilient floor layers | 14.00 | 2.92 |
| Piledrivers | 13.85 | 3.07 |
| Diver's Tenders | 13.85 | 3.07 |
| Divers | 28.75 | 3.07 |
| Millwrights | 14.28 | 3.27 |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. OR85-5030 - Mod #2 (50 FR 26893 - June 28, 1985) Statewide Oregon | | |
| CHANGE: | | |
| LABORERS: (See Footnote "C" Groups 1 to 4 only) | | |

(4)



| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. PA84-3035 MOD. NO. 6 (49 FR 27243 - Sept. 21, 1984) Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania | | |
| CHANGE: | | |
| Ironworkers: | | |
| Lackawanna, Wayne and Wyoming Counties: | | |
| Structural & Ornamental | $17.75 | 4.80 |
| Reinforcing | 17.50 | 4.80 |
| DECISION NO. PA84-3037 MOD. NO. 3 (49 FR 39436 - October 5, 1984) Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties, Pennsylvania | | |
| CHANGE: | | |
| Ironworkers: | | |
| Zone 3 | | |
| Structural | 17.75 | 4.80 |
| Reinforcing | 17.50 | 4.80 |
| DECISION NO. PA84-3049 MOD. NO. 3 (49 FR 49825 - DEcember 21, 1984) Luzerne County, Pennsylvania | | |
| CHANGE: | | |
| Ironworkers: | | |
| Structural & Ornamental | 17.75 | 4.80 |
| Reinforcing | 17.50 | 4.80 |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. PA85-3017 MOD. NO. 2 (50 FR 13702 - April 5, 1985) Carbon, Monroe County including Tobyhanna Army Depot and Pike County, Pennsylvania | | |
| CHANGE: | | |
| Ironworkers: | | |
| Structural & Ornamental | 17.75 | 4.80 |
| Reinforcing | 17.50 | 4.80 |
| DECISION NO. PA85-3037 MOD. NO. 1 (50 FR 32369 - August 9, 1985) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania | | |
| CHANGE: | | |
| Ironworkers: | | |
| Columbia, Lackawanna, Luzerne, Sullivan, Wayne, Wyoming, Pike Cos., (Monroe County Tobyhanna Depot only) | | |
| Structural & Ornamental | 17.75 | 4.80 |
| Reinforcing | 17.50 | 4.80 |

(5)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. NJ85-3031 | | |
| MOD. NO. 3 | | |
| (50 FR 31459 - August 2, 1985) | | |
| Bergen, Essex, Hudson, (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey | | |
| CHANGE: | | |
| Electricians & Cable Splicers: | | |
| Zone 3 | $21.75 | 3.04+ 10% |
| Zone 8 | 21.45 | 3.04+ 10% |
| Zone 10 | 21.73 | 3.04+ 10% |
| Line Construction: | | |
| Zone 5 | | |
| Linemen & Cable Splicer | 21.45 | 3.00+ 10% |
| Groundman | 18.50 | 3.00+ 10% |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. ND84-5032 - Mod.#3 | | |
| (49 FR 41136 - October 19, 1984) | | |
| Statewide, North Dakota | | |
| Omit: | | |
| All Heavy Construction Wage Rates and Classifications | | |
| Change: | | |
| Description of work to read: | | |
| Highway Construction Projects | | |
| Ironworkers, Structural Steel: | | |
| Mercer County | $14.63 | $3.19 |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. VA84-3006 | | |
| MOD. #2 | | |
| (49 FR 27878-July 6, 1984) | | |
| City of Newport News & (FORT EUSTIS) | | |
| CHANGE: | | |
| ELECTRICIANS | 13.83 | 1.15+9% |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. VA85-3025 | | |
| MOD. #1 | | |
| (59 FR 18966-May 3, 1985) | | |
| RADFORD ARMY AMMUNITION PLANT, VIRGINIA | | |
| CHANGE: | | |
| SHEET METAL WORKERS | 13.50 | 2.09 |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. VA85-3020- | | |
| MOD. #4 | | |
| (50 FR 13706-April 6, 1985) | | |
| HENRICO AND THE Independent City of RICHMOND. | | |
| CHANGE: | | |
| ASBESTOS WORKERS | 14.03 | 3.30 |
| ELECTRICIANS | 14.70 | 13½% |
| ELEVATOR CONSTRUCTORS | 12.99 | 3.29+ a&b |
| ELEVATOR CONSTRUCTORS HELPERS | 9.09 | 3.29+ a&b |
| ELEVATOR CONSTRUCTORS HELPERS, PROBATIONARY | 6.495 | |
| LABORERS: | | |
| Laborers | 6.75 | .71 |
| Tenders (excluding brick masons tenders) Motorized Georgia Buggy Operators, Nozzlemen (Gunnite or Sandblasting), Concrete Saw Operator, Air Tool and Vibrator Operators | 8.25 | .71 |
| Motor Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Setters Helpers | 8.40 | .71 |
| Burners (wrecking) | 8.50 | .71 |
| Floor, Base & Terrazzo Grinders | 8.55 | .71 |
| Wagon Drill Air Tract | 8.65 | .71 |
| Powdermen | 8.90 | .71 |
| ROOFERS, Composition | 8.50 | |

(6)



| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. WI84-5038 | | |
| MOD. #3 | | |
| (49 FR 41148-October 19, 1984) | | |
| Milwaukee, Ozaukee, Waukesha and Washington Counties Wisconsin | | |
| OMIT: | | |
| Communication Systems: | | |
| Installer | $11.88 | $3.59 |
| Insulators | 12.50 | 3.91 |
| ADD: | | |
| Communication Systems: | | |
| Installer | 11.88 | 3.59 |
| Insulators | 12.50 | 3.91 |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| DECISION NO. WI83-2078 | | |
| MOD #8 | | |
| (48 FR 45919-October 7, 1983) | | |
| Columbia, Dane Iowa and Sauk Counties, Wisconsin | | |
| CHANGE: | | |
| Roofers | $15.44 | .40 |

(7)

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|

SUPERSEDEAS DECISION

STATE: Louisiana PARISH: Calcasieu
DECISION NO.: LA85-4029 DATE: Date of Publication
Supersedes Decision No. LA84-4008, dated 2/17/84, in 49 FR 6205
DESCRIPTION OF WORK: Residential Projects consisting of single family homes & apartments up to & including 4 stories.

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| ASBESTOS WORKERS | $19.145 | 2.335 |
| BRICKLAYERS & STONEMASONS | 11.01 | 2.32 |
| CARPENTERS: | | |
| Carpenters, piledrivermen & soft floor layers | 10.72 | 1.60 |
| Millwrights | 15.46 | .07 |
| CEMENT MASONS | 13.42 | |
| ELECTRICIANS: | | |
| New & old single or multiple family residence & apt. complex not to exceed 12 units, 2-story walk-ups | 10.90 | 2.00+ 3-5/10% |
| Other work: | | |
| Electricians | 17.70 | 2.00+ 3-5/10% |
| Cable splicers | 18.20 | 2.00+ 3-5/10% |
| ELEVATOR CONSTRUCTORS: | | |
| Mechanics | 14.87 | 3.29+a |
| Helpers | 70%JR | 3.29+a |
| Helpers (Prob.) | 50%JR | |
| GLAZIERS | 15.25 | .02+b |
| IRONWORKERS | 11.02 | 2.42 |
| LABORERS | 8.00 | 1.04 |
| LATHERS | 10.72 | 1.60 |
| MARBLE & TERRAZZO WORKERS | 11.01 | 2.32 |
| PAINTERS: | | |
| New Construction | 12.45 | .60 |
| Maintenance | 11.65 | .60 |
| PLASTERERS | 14.20 | |

| | Basic Hourly Rates | Fringe Benefits |
|---|---|---|
| PLUMBERS & PIPEFITTERS | $12.46 | 3.00 |
| POWER EQUIPMENT OPERATOR: | | |
| GROUP 1 | 13.36 | 2.50 |
| GROUP 2 | 9.25 | 2.50 |
| GROUP 3 | 13.61 | 2.50 |
| GROUP 4 | 13.86 | 2.50 |
| GROUP 5 | 14.11 | 2.50 |
| GROUP 6 | 14.36 | 2.50 |
| GROUP 7 | 14.86 | 2.50 |
| GROUP 8 | 8.59 | 2.50 |
| ROOFERS: | | |
| Roofers | 12.90 | .20 |
| Roofer helpers remove old roofing, hustle material & cleanup under supervision of journeymen | 8.10 | .20 |
| SHEET METAL WORKERS | 17.28 | 3.12+3% |
| SPRINKLER FITTERS | 15.07 | 3.23 |
| TILE SETTERS | 15.07 | 1.70 |
| TRUCK DRIVERS | 9.10 | 1.10 |
| WELDERS - receive rate prescribed for craft performing operation to which welding is incidental | | |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).





PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS & GLAZIERS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS & GLAZIERS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; Seven Paid Holidays A thru G
b - 5 days paid vacation; Paid Holidays A, C, D, E, G & Good Friday

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS
GROUP 1 - Crane, all types; derricks; deck winches (2); Hi-Ho & similar type equipment; three drum (or more) stabilizers; pulls, all types; concrete mixer 1 yd. & over; all pavers; ditching or trenching machines (track type); mechanics & equipment welders; well point systems; hoist, 2 drums or more; hoist, 1 drum, 40 vertical ft. or more; scrapers; bolldozers, rubber-tired or track, other than farm-type; scoopmobile; motor patrol; gradeall; roller on hot mix; asphalt paving machines; front end loaders, other than farm-type, one cubic yard or over; shovels & backhoes, all types & equivalent equipment; piledriver operator; side boom cats; boom truck; bush hog; cableways; cherry pickers (all types); dredges; foundation drill locomotives (all types); motorized street sweepers (self-propelled); push cat; test pump (internal combustion engine powered)
GROUP 2 - 2 drum & single drum stabilizers; front end loaders under 1 cubic yard;A-frame truck when handling steel or pipe; finishing machines (concrete); power subgraders; 2 tractors (crawler type); 1 drum hoist under 40 vertical ft.; fireman; concrete spreader; pugmill op.; bituminous distributor on surface treatment & equivalent equipment; bull floats & equivalent equipment; job greaseman; work boats, not requiring licensed ops.; inboard & outboard motored crew boats; concrete mixer under 1 yd.; spray curing machines; rollers on subgrade; 1 air compressor over 125 cu. ft.; form graders; asphalt finisher screedman; pump over 4 inches; scale ops; crusher ops.; concrete jointing machines; concrete saw; tack machines & equivalent equipment; pumpcrete; electric elevator (inside); oiler drivers; farm-type, rubber-tired tractor, with attachments, except backhoes; Kolum buff & similar equipment; fork lifts, 10 ton capacity & under; mechanic helper, batch plant op.; oiler on crane using air to drive piles, fireman operating steam valve, unit ops.; fireman; mixers (1 sack under); oiler; oiler-compressor op.; oiler-driver on motor crane; oiler-frieman; pump (under 3" suction); scale op.; water blast pump; welding machine
GROUP 3 - Op. on crane 60 to 99 tons; crane w/boom 100 ft. to 149 ft.
GROUP 4 - Op. on crane 100 to 125 tons; crane w/boom 150 ft. to 224 ft.
GROUP 5 - Op. on crane 126 to 200 tons
GROUP 6 - Op. on crane 201 to 300 tons; crane w/boom 225 ft. to 299 ft.
GROUP 7 - Op. on crane over 300 tons; crane w/boom 300 ft. & over
GROUP 8 - Oiler



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# Part IV

# Environmental Protection Agency

## 40 CFR Part 86

**Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final and Proposed Rules**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 86**

**[FRL-2869-1]**

## Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is promulgating the generic aspects of a nonconformance penalty (NCP) rule. The NCP will allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV cannot be certified.

This rule specifies the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP and other general aspects of an NCP rule. Specific upper limits and penalty rates to be used in the penalty formula are proposed in a separate rulemaking published elsewhere in this issue.

This rule is the result of an innovative rulemaking process called Regulatory Negotiation, the concept of which is to allow the parties interested in or affected by the outcome of the rule an opportunity to participate in its development through face-to-face negotiations. This rule, which was proposed in 50 FR 9204 (March 6, 1985), is based upon the consensus that was reached during the Regulatory Negotiation process. This is EPA's first completed rulemaking under this new regulatory process.

Regulations affected by this rulemaking are codified in Subparts A, K and L of 40 CFR Part 86.

**EFFECTIVE DATE:** September 30, 1985.

**ADDRESS:** Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-85-02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/Gallery 1, 401 M Street, S.W., Washington, D.C. 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division (EN-340F), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 382-2487 or (202) 382-2547.

**SUPPLEMENTARY INFORMATION**

### A. 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 any class or category of heavy-duty vehicles or engines which exceeds a section 202(a) emissions standard, but does not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards.[1] 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 to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6000 pounds gross vehicle weight (GVW). They include the part of the light-duty truck (LDT) class between 6001 and 8500 pounds GVW—the heavy light-duty trucks. The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any 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. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects to pay an NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

However, if the emission level of a vehicle or engine exceeds the upper limit of nonconformity, 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.

### B. Previous EPA Rulemakings Regarding Heavy-Duty Engine and Light-Duty Truck NCPs

NCPs were previously proposed by EPA in two separate rulemakings. An NCP system was first proposed when EPA proposed HC and CO standards for 1983 and later model year HDEs (44 FR 9464, February 13, 1979). A generic NCP formula was proposed, based on the marginal cost of bringing a "typical" HDE into compliance when its emissions are in the allowable range of nonconformity (not in excess of the upper limit). Also proposed was a system of Production Compliance Auditing (PCA) to measure the compliance levels of vehicles and engines which may qualify for NCPs. The notice stated that the proposed hydrocarbon (HC) and carbon monoxide (CO) emission standards for HDEs could probably be achieved by all manufacturers, so that upper limits would be set equal to the proposed standards, and NCPs would not be offered for those standards. A similar NCP/PCA system was outlined when EPA proposed HC and CO standards for 1983 and later model year LDTs (44 FR 40784, July 12, 1979), but again, specific NCPs were not proposed.

[1] The existence of NCPs, however, will not change the criteria under which the standards have been and will be set under section 202.

In adopting the final HC and CO standards for both HDEs and LDTs, EPA stated that NCPs would be offered as part of a separate rulemaking to provide for isolated instances where compliance was not achieved. However, in April, 1981, the Administration announced a number of regulatory relief initiatives aimed at reducing the impact of government regulations on the automotive industry. One element of this program included the proposed revision of HC and CO emission standards so that catalysts would not be required for heavy-duty gasoline engines. Thus, NCPs were not offered for the final standards, as revised in 1983 (48 FR 1413, 1424, January 12, 1983), since the Agency believed manufacturers could generally comply with the revised standards. However, recognizing that NCPs may be necessary for some future emissions standards, such as the oxides of nitrogen ($NO_x$) and particulate standards recently promulgated for 1988 and later model years (50 FR 10606, March 15, 1985), or for previously promulgated standards if future standards for other pollutants makes compliance with existing standards more difficult, EPA published the Notice of Proposed Rulemaking (NPRM) for this rule earlier this year (50 FR 9204, March 6, 1985).

### C. Generic Rule

This rule is the culmination of the generic phase (Phase I) of the current NCP rulemaking. During this generic phase, EPA is promulgating regulations concerning when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity. This final rule adopts, in most respects, the proposed generic rule. In Phase II, EPA will apply the Phase I concepts to determine particular emissions standards for which NCPs will be available, specific upper limits, and numerical values for the variables in the penalty formula for particular subclasses of engines. Subsequent phases will repeat this process as necessary for other future standards.

Under the schedule set by a federal district court order in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84-758 (D.D.C. Sept. 14, 1984), EPA will publish this generic final rule and the Phase II NPRM by August 31, 1985, and the Phase II final rule by December 31, 1985.

### D. Public Participation

This rule is a result of an innovative rulemaking process called regulatory negotiation, which allows the parties interested in or affected by the outcome of the proposed rule an opportunity to participate in the rule's development through face-to-face negotiations. This rule is based largely upon the consensus that was reached during the regulatory negotiation process prior to the proposal. This is EPA's first completed rulemaking under this new regulatory process.

Participants in the negotiations included heavy-duty vehicle and engine manufacturers, representatives of state air pollution control programs, an environmental organization, industry trade associations and EPA.

During the time that was available for public comment on the NPRM, a total of thirteen organizations presented written and/or oral comments. Seven were heavy-duty vehicle or engine manufacturers, three were industry trade associations, two were state air pollution control programs and one was an environmental organization.

Several of the participants in the negotiations commented that EPA should use the regulatory negotiation process for the Phase II NCP rulemaking. Due to the court-ordered deadline of August 31, 1985 for publication of the Phase II proposal, however, there is insufficient time to use the regulatory negotiation process.

### E. Discussion of Final Rule and Comments

This final rule adopts most of the proposed provisions for the reasons stated in the NPRM. EPA will not discuss in this notice all of the provisions of the rule. Instead, EPA will discuss only the most significant provisions, or those that have been significantly revised or that were criticized in comments.

#### *1. Availability Criteria*

This generic rule imposes three conditions, as proposed, that must be met before NCPs will be made available: an emission standard must become more dificult to meet, either because the standard itself has become more stringent or because compliance with it has been made more difficult because of another standard which has become more stringent; EPA must find that substantial work is necessary to meet the standard; and EPA must determine that there is likely to be a technological laggard.

The possibility of a technological laggard is a key concept in the NCP availability scheme. Congress intended that EPA limit the availability of NCPs to situations where there are likely to be technological laggards. One purpose of section 206(g) was to avoid, at least temporarily, the problem of technological laggards being driven out of the market because of their inability to meet technology-forcing emissions standards. Thus, the existence of NCPs presupposes the existence of a potential laggard. If laggards are not anticipated, then an upper limit may be set equal to the standard and NCPs need not be offered.

The Engine Manufacturers Association (EMA) and Onan Corporation commented that EPA should accept a manufacturer's claim that it cannot comply as *prima facie* evidence that there is likely to be a technological laggard. Of course, when considering whether to make an NCP available, EPA intends to seek comments on the likelihood that there will be a laggard and will accord respect to a manufacturer's claim. However, as the Agency made clear during the negotiations, EPA does not have the burden of disproving the manufacturer's claim. The regulatory negotiation consensus document stated that an NCP will be made available only when "*EPA finds* . . . that there is likely to be a technological laggard" (emphasis added). Because the manufacturer has superior access to data for developmental emissions control technology, the Agency believes that it must be the manufacturer's responsibility to support any claim that there will be a technological laggard and not EPA's responsibility to disprove the manufacturer's claim. Accordingly, EPA chooses to adopt the provision as proposed, and reject the comments.

In the proposal, EPA requested comments on whether it could offer NCPs for evaporative emission standards for heavy-duty vehicles in excess of 8,500 pounds GVWR, without departing from the consensus agreement. All commenters stated that the EPA proposal was correct in making NCPs potentially available for these heavy-duty vehicles. Accordingly, this rule confirms that NCPs may be made available in the future for evaporative emissons from such vehicles.

Another issue raised in the NPRM was whether vehicles or engines which qualify as HDVs on the basis of vehicle frontal area greater than 45 square feet could qualify for NCPs, even though they are under 6,000 pounds GVWR. Onan Corporation stated that vehicles with greater than 45 square feet frontal area or engines to be installed in such vehicles should qualify for NCPs so that nonconforming engines could be installed in a greater range of vehicle chassis. However, EPA agrees with the comment of the Manufacturers of Emission Controls Association (MECA), which stated that sections 202(b)(3)(C) and 206(g) of the Act require that a vehicle/engine combination must exceed 6,000 pounds GVWR to be considered heavy-duty and, thus, eligible for an NCP. Thus, NCPs will not be available for vehicles which exceed 45 square feet frontal area, but not 6,000 pounds GVWR.

Once EPA makes NCPs for a given pollutant available for any subclass or other group, they may be used by any manufacturer for its vehicles or engines in that category, with the exception of nonconforming vehicles or engines imported under 40 CFR Part 85, Subpart P. When a manufacturer decides to pay an NCP, no judgments will be made about whether the manufacturer is motivated by economic rather than technological reasons. The penalty formula, as discussed below, has been designed to remove the economic advantage for nonconformance and, by doing so, obviates the need for making difficult determinations of subjective intent.

If NCPs are appropriate, they will generally be made available concurrent with a promulgation or revision of emission standards. But as EPA stated in the NPRM, "when this is not feasible or appropriate, the NCPs will be published subsequent to the promulgation of the new standards." 50 FR 9204, 9206 (March 6, 1985).

Concerning availability of NCPs as a remedy for in-use nonconformities, EMA and General Motors Corporation (GM) protested the Agency's statement in the proposal that "NCPs are not available to a manufacturer in lieu of recalling engines or vehicles due to in-use nonconformities." Both argued that this issue is specific, not generic, and thus should be addressed in Phase II of the NCP rulemaking. Furthermore, they claimed that this statement in the Phase I NPRM was offered without adequate explanation. However, EPA repeatedly emphasized during the regulatory negotiation process that Congress clearly intended NCPs solely as a remedy for problems with obtaining or retaining certificates of conformity. In describing NCPs, section 206(g)(1) states that "a certificate of conformity . . . shall not be suspended or revoked" if a manufacturer pays NCPs on the nonconforming vehicles or engines. Similarly, the legislative history of section 206(g) only discusses NCPs as a means of avoiding denial, suspension, or revocation of a certificate of conformity. *See* H.R. Rep. No. 95-294 95th Cong., 1st Sess. 275-76 (1977); Conference Report, H.R. Rep. No. 95-564 95th Cong., 1st Sess. 163 (1977). A certificate of conformity only permits a manufacturer to put a vehicle or engine into the stream of commerce. See section 203(a)(1). Since an in-use problem would normally not affect the certificate of conformity, NCPs were not intended to be available to remedy in-use problems. Accordingly, EPA concludes that there is no authority under section 206(g) to offer NCPs for in-use vehicles and that this is clearly a generic issue appropriate for resolution in Phase I. For similar reasons, EPA will not permit NCPs for vehicles or engines produced prior to an SEA failure (*see infra*).

*2. Upper Limits*

An upper limit is an emission level, established by regulation and appropriate to a specific HDE or HDV pollutant, above which NCPs are not available and an HDE or HDV configuration cannot be certified or introduced into commerce. In effect, this limits the magnitude of the overall effect on air quality this might result from use of NCPs and, in all cases, prevents the introduction into commerce of grossly polluting engines or vehicles. Section 206(g)(2) of the Clean Air Act refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be "practicable."

EPA intends to set each upper limit at an emission level that should be achievable by all manufacturers, including technological laggards. EPA proposed that when an emission standard is changed and becomes more stringent than the prior emission standard, the upper limit for the new emission standard be the prior emission standard, when one existed. EPA requested comments on whether this should always be the case. The NPRM also proposed that in cases where there is no prior standard, the upper limit would be set by EPA through the rulemaking process.

Mack Trucks supported the concept that the prior emission standard, where there is one, should always be the upper limit. MECA commented that it is opposed to setting the upper limit above the old standard simply to facilitate the emissions averaging program.

Several manufacturers, however, commented that the upper limit for an emission standard should be the prior emission standard, except that it should not be more stringent than the corresponding upper limit (i.e., the family emission limit), if there is one, for emissions averaging purposes (e.g., for particulate emissions, 50 FR 10607). GM commented that it would be too confusing for a manufacturer to be potentially subject to different upper limits for the same pollutant in the NCP program and the emission averaging program.

The California Air Resources Board (CARB) commented that the upper limit for an unchanged emission standard that becomes more difficult to meet due to a change in another standard should not be the prior emission standard. CARB suggested that the upper limit in this situation should be determined by EPA based on the degree by which the unchanged emission standard has become more stringent.

EPA has considered all comments received on this issue and has decided that the upper limit for standards tightened either by regulation or by operation of another standard will be the prior emission standard, when one existed. When an emission standard is promulgated for a pollutant that had no prior emission standard, the upper limit will be determined by EPA through rulemaking. In the limited circumstances where a manufacturer participates in the emissions averaging program and carries over certification of an engine family from the prior model year, the upper limit for that engine family will be the family emission limit of the prior model year, provided that the family emission limit was above the prior emission standard.

EPA reached these decisions because it believes that if NCPs are available, a manufacturer should not be forced to immediately remove an HDE or HDV from the market when an emission standard becomes more stringent. Therefore, the upper limit for a standard should be set at a level that is reasonably achievable by all manufacturers with vehicles in the relevant class. For standards tightened by regulation, the prior emission standard or family emission limit, when it exists, represents such a level, since manufacturers certified their vehicles to that standard or limit in the past. For standards tightened by operation of another standard, the previous standard will not necessarily represent such a level, as manufacturers did not in the past have to meet the prior standard *and* the standard whose operation has tightened the current standard. However, EPA believes that in practice the prior standard should be achieveable in almost all cases and thus adopts the consensus approach to setting the upper limit for standards tightened by operation of another standard. As for identifying an upper limit more stringent than the prior standard, as suggested by CARB, EPA believes that it would often be very difficult to identify such a limit that all manufacturers could meet, considering the number and variety of vehicle models potentially involved. Because of the administrative burden and risk of noncompliance associated with setting an upper limit somewhere below the previous standard, EPA rejects such an approach.

With the exception noted above for averaged engine families carried over into the current model year, EPA is uncertain how the NCP program and the emissions averaging program will relate. However, EPA at this time agrees in general with MECA's comment that the NCP upper limit should not be set above the prior emission standard simply to facilitate the combining of NCPs and emissions averaging. Moreover, EPA does not agree with GM's comment that being potentially subject to different upper limits for the same pollutant under these two programs would be too confusing for manufacturers. Therefore, the Agency has decided not to set the NCP upper limit at a level above the prior emission limit, except in the case of averaged engine families carried over into the current model year.

*3. Implementation Scheme*

a. Production Compliance Auditing

As proposed, before a manufacturer can pay an NCP for the introduction into commerce of nonconforming engines or vehicles, it would have to perform a Production Compliance Audit (PCA) to determine the emission levels that are being emitted by those production engines or vehicles. A manufacturer can elect to conduct a PCA following the failure of engines or vehicles to conform with emission requirements during certification testing or Selective Enforcement Audit (SEA) testing or following a production running change, provided that certain conditions, discussed below, are met.

The purpose of a PCA is to establish "compliance levels" for the pollutants for which the NCPs have been elected. The compliance level is somewhat analogous to the Acceptable Quality Level in EPA's existing production line SEA testing program (40 CFR Part 86, Subpart K). The compliance level is a value derived from the PCA test results and set so that 40 percent of the HDEs or HDVs tested have emission levels greater than that value; that is, the compliance level marks the 60th percentile of the emissions distribution of these HDEs or HDVs.[3]

As discussed previously, the PCA compliance level is used to determine the size of an NCP penalty and, if the vehicles are introduced into commerce and the penalty is paid, the compliance level becomes the level at which the manufacturer may incur warranty and recall liability for engines and vehicles which are subsequently found to exceed that level during their useful lives.[4] The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29-69.

The PCA is also used to determine whether the emission levels for the pollutants for which the PCA was initiated are in excess of the associated upper limit. If a compliance level is determined to be in excess of the upper limit for the applicable emission standard, NCPs would not be available.

As proposed, EPA is promulgating three alternative sampling plans that would establish the compliance level(s) during PCA testing: the primary sampling plan and two optional reduced sampling plans.

The primary sampling plan is a non-parametric test (i.e., not dependent on emission distribution) which requires the testing of at least 24 engines or vehicles. The emission test results from the PCA are ranked in order from the lowest to the highest values, and the test result of the sequence number determined from Table 1 of Appendix XII of this rule becomes the compliance level. This test result approximates the 60th percentile points. This is a variation of the testing plan EPA proposed in 44 FR 9490 (February 13, 1979) and 44 FR 40826 (July 12, 1979).

EPA is also promulgating two optional sampling plans: the fixed reduced sampling plan and the sequential reduced sampling plan. These reduced sampling plans, which require fewer tests, are being promulgated to accommodate small volume manufacturers or manufacturers with high testing costs, although any manufacturer may use either of them. Each reduced sampling plan is a parametric test (i.e., assuming a normal emission distribution) with a sample size of less than 24 engines or vehicles. In both cases, the compliance level is equal to the value of $\bar{X}+Ks$, where $\bar{X}$ is the mean of a sample of emission test results, s is the sample standard deviation, and K is a factor that provides for the additional protection against underestimation required by EPA for a test sample size less than 24. The value of K depends upon the sample size and decreases, approaching a constant, as the sample size increases. Due to the smaller test sample and the assumption of a normal emission distribution, the reduced sampling plans are likely to result in a somewhat higher compliance level than the primary sampling plan. Thus, the reduced sampling plans give the manufacturer the option of a reduced testing burden at the expense of a penalty per engine that is likely to be higher than that determined using the primary sampling plan.

A manufacturer that elects to use the fixed reduced sampling plan has the option to choose a sample size between 3 and 23 engines or vehicles. However, that specific sample size must be selected prior to the start of testing. For values of K that correspond to a specific sample size using this sampling plan, see Table 2 of Appendix XII of the regulations.

A manufacturer that elects to use the sequential reduced sampling plan has the option to choose a sample size between 4 and 20 engines or vehicles, provided that the sample size is a multiple of 4 (i.e., 4, 8, 12, 16 or 20). After the manufacturer tests the engines or vehicles of the selected sample size and determines the compliance level, it has the option to continue testing, in multiples of 4 engines or vehicles up to the maximum sample size of 20, to revise the initially determined compliance level. For values of K that correspond to the five possible sample sizes using this sampling plan, see Table 3 of Appendix XII of the regulations.

As noted, a manufacturer has the option to choose any of the three sampling plans. EPA proposed that once PCA testing began, the manufacturer would not be able to change sampling plans. EPA requested comments on whether a manufacturer should be allowed the option of changing to the primary (non-parametric) sampling plan during the course of testing under either optional (parametric) sampling plan. Several manufacturers commented that they should be allowed this option because the primary sampling plan provides the most representative measure of the compliance level. EPA agrees with these comments and their

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[3] Of course any individual HDEs or HDVs whose emissions during the PCA testing exceed the ultimate compliance level (the 60th percentile) would not be covered by a certificate and could not be sold until they are brought into conformity with the compliance level.

[4] In essence, the compliance level contained in the certificate under which such in-use engines or vehicles were sold is equivalent to an emission standard for those engines or vehicles. It will remain in effect during the entire useful lives of those engines or vehicles and be applicable to them for warranty and recall purposes, even though (as discussed below) another compliance level may be set subsequently for engines or vehicles of the same family produced later.

rationale and, accordingly, will allow this option.

One manufacturer commented that EPA should also allow a manufacturer to test engines/vehicles sequentially when using the fixed reduced sampling plan. EPA rejects this concept because it has already provided a sequential sampling plan and, by definition, the fixed reduced sampling plan is not valid when testing sequentially.

Following selection of the sampling plan, and of the specific sample size if a reduced sampling plan is elected, an appropriate sample of engines or vehicles is then drawn at random from the production line or storage lot and tested. The sample may be drawn all at one time, in groups, or as needed for testing provided that the testing requirements, as specified in these regulations, are satisfied.

Several manufacturers commented that they should be allowed the option to choose a compliance level higher than that calculated in the PCA so that they could mitigate their in-use liability (i.e., they would use a higher compliance level as a "cushion" in case production vehicles failed to meet the PCA level in-use). The Natural Resources Defense Council (NRDC) expressed opposition to this concept. EPA is also opposed to this concept and has not provided for it because it would allow the use of NCPs to reduce in-use liability and, as discussed previously, NCPs are not available as a remedy for in-use nonconformance. Furthermore, EPA is opposed to allowing emissions to exceed levels demonstrated to be achievable in the PCA.

Several manufacturers also commented that they should be allowed the option to forego PCA testing and choose the upper limit as the compliance level if certification or SEA test results show conformance with the upper limit. EPA will not allow this. The Clean Air Act requires that the NCP be based on production line testing, not solely on certification results. While SEA is a production line test, it would require more tests in an SEA to demonstrate conformance to the upper limit than is required in a PCA. Therefore, if enough tests were conducted to reach a decision during an SEA, a compliance level could be determined from the SEA data using one of three PCA sampling plans without further testing. The fixed reduced sampling plan only requires a minimun of three tests. In this manner, EPA is allowing manufacturers to use the SEA data to establish a compliance level.

A revised support document entitled "An Analytical Development of Sampling Plans for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles" is available in the Public Docket for this rulemaking. This document explains in greater detail the three PCA sampling plans.

b. Certification Failure

If an HDE or HDV manufacturer's certification test results exceed the emission standard for a particular pollutant, but do not exceed the upper limit associated with that pollutant, the manufacturer would have the following alternatives: remedy the nonconformity and seek certification, elect to pay an NCP, or not certify. If the manufacturer's certification test results are in excess of the upper limit, of course, no certificate would be offered and no NCP would be made available.

As proposed, if the manufacturer elects to pay an NCP and otherwise complies with the certification requirements, a qualified certificate will be offered to enable the manufacturer to introduce engines or vehicles into commerce while the manufacturer is expeditiously conducting PCA testing of those engines or vehicles. The qualified certificate will require payment of the NCP based on the result of PCA testing. It will also require an agreement by the holder of the certificate to recall all engines or vehicles that have been introduced into commerce under that certificate, without invoking the requirements of section 207(c) of the Clean Air Act, if the compliance level established during the PCA exceeds the upper limit. Failure of the manufacturer to implement the required recall or to pay the NCP in a timely manner (as discussed below), assuming the compliance level is below the upper limit, would result in voiding of the certificate for those specific engines or vehicles subject to nonpayment or to the recall. EMA commented that all qualifications, except the obligation to pay the NCP, should be removed from the certificate if the compliance level established during the PCA is below the upper limit. However, since the agreement to recall engines or vehicles would not be invoked in such a case, EPA does not believe that a new certificate need be issued.

EPA proposed that the qualified certificate would also require a manufacturer to agree to "any other terms and conditions the Administrator may require." Several manufacturers commented that EPA should not require such an agreement. EPA has decided to delete this requirement for an agreement under these Subpart L regulations, but points out that under existing certification regulations, 40 CFR 86.087-30, all certificates of conformity are issued "upon such terms as the [the Administrator] may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part." Thus, the proposed requirement has been deleted because EPA already has all the authority it needs to impose appropriate conditions.

EPA also proposed that the engine or vehicle configuration tested in the PCA be the one which was unable to conform with the emission standard during certification testing.

The PCA will be promptly initiated following the start of assembly line production of those engines or vehicles. Failure of a manufacturer to initiate the PCA as soon as practical could result in a suspension of the qualified certificate of conformity. The proposed regulatory language indicates that the manufacturer must initiate selection of engines or vehicles for PCA testing no later than five days after the start of assembly-line production, unless that period is extended by the Administrator. Onan Corporation commented that a manufacturer that depends on a contractor laboratory for PCA testing should be granted additional time, on request, to initiate the PCA. EPA does not believe that it is necessary to revise the proposed regulatory language, since it already allows the Administrator to delay the start of the PCA whenever circumstances make that appropriate. Thus, the proposed language has been incorporated in this rule.

In addition, as proposed, if as a result of the PCA the compliance level is determined to be at or below the standard, the NCP conditions contained in any qualified certificate will be inapplicable and no NCP will be paid.

c. SEA Failure

A manufacturer whose HDEs or HDVs fail an SEA with respect to a pollutant standard for which an upper limit has been provided, but do not fail with respect to that upper limit, has the following alternatives: remedy the nonconformity, elect to pay an NCP commensurate with the degree of the failure, or cease the introduction into commerce of the applicable engines or vehicles. EPA requested comments on whether a manufacturer that elects to pay an NCP should be required to continue SEA testing after a fail decision is reached with respect to the standard, if necessary to obtain enough data to determine whether a fail decision is also made with respect to the upper limit. Several manufacturers commented that the continuation of the SEA should not be required because the PCA test procedures require a pass/fail determination with respect to the upper limit and requiring such a determination in the SEA would be redundant. GM also commented that a manufacturer should have the option to test, during the PCA, engines or vehicles selected but not tested in the SEA, as opposed to selecting a new sample from the production line. EPA agrees that requiring a pass/fail determination of the upper limit in both the SEA and the PCA would be redundant. Therefore, EPA will not require the continuation of a failed SEA so that a decision can be made with respect to the upper limit. Futhermore, EPA will allow a manufacturer to test in the PCA available SEA engines or vehicles not already tested in the SEA. Additional selection of engines or vehicles will be conducted during the PCA, if necessary, to allow the completion of testing.

A manufacturer could also be issued an SEA test order for a configuration for which an NCP has previously been assessed. If the SEA results in a fail decision with respect to the compliance level but not the associated upper limit, the manufacturer will be required to initiate a PCA to establish a new compliance level and NCP in order for that configuration to continue to be introduced into commerce. If the SEA results in a pass decision with respect to the emission standards, the manufacturer then could elect to perform a PCA to attempt to reduce or eliminate the penalty being paid.

GM commented that if a manufacturer passes an SEA with respect to the emission standards, the penalty being paid should automatically be eliminated without the need for a PCA to confirm the SEA results. EPA does not agree due to the relative "ease" by which an SEA can be passed. A manufacturer with 40 percent nonconformance has only a 5 percent chance of failing an SEA. Therefore, a manufacturer with significant nonconformance could manage to pass an SEA with respect to the standards, yet the results of the subsequent PCA could still be above the standard. EPA believes that since a PCA is required to establish an NCP, it should also be required to reduce or eliminate one. Thus, EPA's proposal on this matter remains unchanged.

If the SEA results in a fail decision with respect to the upper limit for that pollutant, no NCP will be available and the certificate for that configuration would be suspended not earlier than ten days from the date of the SEA failure, in accordance with 40 CFR 86.1012-84 of the SEA regulations. GM commented that a manufacturer should be allowed to request an NCP at any time (before a fail decision is reached) during an SEA. EPA cannot agree to this because, as discussed earlier in this preamble, NCPs are only available when a manufacturer has been shown, in fact, to be in nonconformance. Therefore, EPA will only allow a manufacturer to request an NCP following an SEA failure. A manufacturer could, however, concede an SEA failure and elect to pay an NCP.

A manufacturer that elects to pay an NCP after an SEA failure would be required to submit a written report to the Administrator within five days after completion of the SEA indicating that it does not intend to remedy the nonconformance on subsequently produced engines or vehicles and the date it intends to begin the PCA testing. EPA had proposed that the manufacturer include in the report the reason for the nonconformance. EMA commented that five days was not enough time to determine and report the reason for the nonconformance. EPA agrees with this comment and believes that the reason for the SEA failure is not essential for NCP purposes. Therefore, to reduce the reporting burden on the manufacturers, EPA will not require a manufacturer to report the reason for the nonconformance.

Failure to submit the report in the specified time period could result in the forfeiture of the NCP option. In accordance with the SEA regulations, this could result in the suspension of the certificate not earlier than ten days after the completion of the SEA.

As proposed, the configuration tested in the PCA will be the same configuration specified on the SEA test order. Failure to begin the PCA testing promptly after the manufacturer elects to pay an NCP could result in suspension of the certificate for the failed configuration. EPA would grant additional time to initiate the PCA if the production line that produces the NCP configuration were not operating.

All the SEA test results for the failed pollutants will be used as part of the PCA test sample. If a manufacturer elects the primary PCA sampling plan and there are 24 or more SEA test results, then no additional tests will be conducted to establish a compliance level during the PCA. A manufacturer that elects a reduced PCA sampling plan could not choose a sample size smaller than the number of engines or vehicles tested during the SEA, as all of the SEA test results will be used to establish the compliance level.

A manufacturer cannot pay an NCP for an individual nonconforming HDE or HDV discovered during SEA or PCA testing in lieu of bringing that engine or vehicle into conformance with the emission standard or compliance level, if applicable. The certificate of conformity covering an individual HDE or HDV whose final SEA or PCA test results, when adjusted by the emissions deterioration factor, exceed the specified emission standard, or compliance level ultimately established for that configuration, would be suspended for that HDE or HDV from the time that SEA or PCA testing is completed. Such a vehicle or engine would have to be brought into conformity with the emission standard, or applicable compliance level, before it could be distributed in commerce.

Several manufacturers commented that an engine or vehicle that exceeds the compliance level in SEA or PCA testing should not have to be brought into conformity. They commented that these engines or vehicles should not be considered to be in nonconformance and that payment of an NCP on them should be sufficient. EPA does not agree. For reasons discussed in detail in the NPRM, the compliance level is equivalent to an emission standard, and EPA cannot allow the sale of any engine or vehicle which has been shown to exceed its emission standard or compliance level. While EPA recognizes that approximately 40 percent of engines or vehicles theoretically may exceed the compliance level as a result of the PCA statistical method, EPA does not condone the sale of any engine or vehicle actually shown to be in nonconformance with the compliance level. Furthermore, under section 206(g)(4), the compliance level is the level at which the manufacturer incurs warranty and recall liability.

d. Production Running Change

As proposed, a manufacturer of HDEs or HDVs that elects to implement a running change on the assembly line, which it expects will cause emission levels to exceed a standard for which an NCP is available (but not the upper limit), may elect to conduct a PCA. Before implementing the running change, the manufacturer will have to submit a written report to EPA indicating the reason for the running change, the testing data and the date the manufacturer intends to begin the PCA testing. Several manufacturers commented that a manufacturer that is paying an NCP with respect to a previously established compliance level should be allowed to implement a production running change that would reduce emissions without performing a PCA to establish a new compliance level. EPA agrees that changes that reduce emissions do not require a new PCA or compliance level as long as the manufacturer is required to pay the established NCP, and has provided for it in the regulations. EPA is allowing this so a manufacturer can avoid PCA testing costs, which may be higher than the amount that the penalty would be reduced.

As proposed, EPA will offer the manufacturer a qualified certificate to enable it to introduce engines or vehicles into commerce while the manufacturer is expeditiously conducting PCA testing of those engines or vehicles. The conditions in the certificate will be the same as those discussed earlier in the case of a certification failure. If the compliance level determined during the PCA is below the applicable standard, an NCP will not be established, or an existing NCP will be terminated, and the NCP qualification to pay the penalty will become inoperative.

e. Assessment and Payment of Penalty

In the case of a certification failure, EPA proposed that the NCP would be assessed against all HDEs or HDVs of the failed engine configuration(s) that are introduced into commerce since the beginning of the model year. Following a production running change that results in emission levels above the emission standard, or compliance level if applicable, the NCP would be assessed against all HDEs or HDVs of the new configuration introduced into commerce after the approved change is implemented. After an SEA failure, the NCP would be assessed against all those HDEs or HDVs of the nonconforming configuration introduced into commerce beginning 10 days after the completion of the SEA. This date was selected to coincide with the date in the SEA regulations for which a certificate of conformity may be suspended after failure to pass the SEA.

EMA and Volvo argued that all engines or vehicles produced prior to a failed SEA during the same model year should be eligible for NCPs. In the proposal, EPA precluded NCPs for most of these vehicles and engines because, as stated previously, NCPs cannot be used to remedy the nonconformities of in-use vehicles and engines. Since most vehicles and engines produced prior to an SEA have already passed into the stream of commerce, they would not be eligible for NCPs, and could be subject to recall and warranty under section 207 if they exceed the standard. However, consistent with that proposal, any vehicles or engines still in the hands of the manufacturer at least 10 days after completion of the SEA, even if produced prior to the failed SEA, would be eligible for NCPs. EMA argues that NCPs should be available for all pre-SEA vehicles, even those already in commerce, because section 206(g)(3)(E) requires NCPs to be set so as to "remove any competitive disadvantage to manufacturers whose engines or vehicles *achieve the required degree of emission reduction* . . . ." (emphasis added). EMA believes that a manufacturer who made a good faith effort to comply, but still failed an SEA, would be penalized in comparison to a manufacturer who made no such effort, failed during certification, and could then use NCPs for the full model year's production. Although it is questionable whether the first manufacturer would suffer any comparative disadvantage, it is ultimately irrelevant because a manufacturer who fails an SEA has not *achieved* the required degree of emission reduction. Thus, there is no statutory duty to protect it from any possible competitive disadvantage and EPA rejects EMA's suggestion.

As proposed, once an NCP is applied, it will continue to be assessed against each engine or vehicle produced for the rest of the model year unless the configuration or engine family is brought into conformance with applicable emission standards due to a production running change. If the NCP configuration is carried over during certification to a future model year, the amount of the penalty will increase according to the annual adjustment factor (see Section F of this preamble).

The regulations provide a payment schedule for the penalty, once assessed, based on calendar quarters. A manufacturer can request the establishment of a payment schedule based on other three-month periods or shorter intervals if approved by the Administrator. Failure to pay the penalty within the time limits established could result in a voiding of the certificate of conformity for those engines or vehicles for which the assessed penalty has not been paid.

The payee will be the United States Treasury and the payment will be sent to EPA's Manufacturers Operations Division along with a report from the manufacturer. The manufacturer's report and payment for all engines or vehicles produced during a calendar quarter will be due to EPA within 30 days after that calendar quarter ends. The manufacturer's report shall contain corporate identification, NCP engine or vehicle identification, certificate identification (number and date), NCP engine or vehicle quantities, and NCP payment calculations. The report will also have to contain an endorsement by a company representative acknowledging the penalties associated with violations of the requirements of the Clean Air Act and the regulations thereunder.

f. Request for Public Hearing

EMA and GM said that EPA should give a hearing right to a manufacturer whose PCA results exceed the upper limit. The proposal did not explicitly provide for a hearing in such a case. EPA has concluded that it is appropriate to grant a hearing if requested, to challenge all compliance levels, whether or not they exceed the upper limit. Under the final rule, the manufacturer may challenge any compliance level by written appeal to the Administrator or by public hearing.

If a manufacturer challenges a compliance level in excess of the upper limit, the Administrator still could suspend the certificate of conformity, pending the outcome of the manufacturer's challenge. This interim suspension is appropriate because of the possibility that the manufacturer could introduce into commerce, prior to the resolution of the manufacturer's challenge, vehicles or engines which actually exceed the upper limit.

The Agency has also made a few clarifications and technical changes in the hearing procedures. For instance, EPA is clarifying that a manufacturer can request a hearing under § 86.1115-87 pursuant to either 40 CFR §§ 86.087-30(e)(6)(i) or 86.087-30(e)(7). It must request the hearing within 15 days of the Administrator's notice of intent to suspend or void the certificate of conformity under § 86.087-30(e).

Also concerning time limits, EPA has lengthened the amount of time permitted for the Agency to commence a hearing, for the parties to submit proposed findings of facts and law, and for the administrative law judge to issue his opinion. In each case, the limit is now 30 days, allowing for a more realistic litigation schedule.

g. EPA Information

EPA will make available in years that NCPs are used by manufacturers the following information for subclasses of engines or vehicles for which NCPs have been used:

i. Estimated total emissions of the engines or vehicles as produced.

ii. Estimated total emissions of the engines or vehicles assuming that all met the standards.

iii. Estimated total emissions of the engines or vehicles assuming the old standard had been met.

iv. Total funds collected from NCPs.

EPA may separate the above information by state.

### 3. Other Implementation Aspects

Several provisions contained in the Subpart L regulations are being promulgated, as proposed, to make the NCP regulations consistent with the SEA regulations (Subparts G and K) for production line testing. These provisions are essentially identical and include:

Testing by the Administrator (§ 86.1107–87)
Maintenance of records (§ 86.1108–87)
Entry and access (§ 86.1109–87)
Sample selection (§ 86.1110–87)
Test procedures for PCA testing (§ 86.1111–87)

In reference to the "Maintenance of records" section, GM commented that a manufacturer should not be required to record the names of all personnel involved in the conduct of the PCA. EPA agrees that such detail is unnecessary and has modified this requirement in the final rule to require only that the names of supervisory personnel be recorded.

In addition, EPA is promulgating, as proposed, minor technical amendments to Subpart A (§ 86.085–22(e) and § 86.087–30(e)) to reference the Subpart L regulations. EPA is also promulgating, as proposed, minor technical amendments to Subpart K to allow SEAs to be conducted for engines or vehicles that have SEA liability with respect to a compliance level, as opposed to an emission standard, determined pursuant to Subpart L.

### 4. Other Public Comment

EPA received comments from Mack Trucks, MECA and NRDC on the relationship between the NCP program and the emissions averaging program. Mack Trucks and NRDC commented that both NCPs and emissions averaging should not be used by a manufacturer for the same engines or vehicles. MECA commented that if a manufacturer uses NCPs, it should be prohibited from using emissions averaging. While EPA views the relationship of these two programs as a generic issue, it is outside the scope of the present rulemaking action. EPA plans to examine this issue and address it in a subsequent rulemaking.

## F. NCP Penalty Formula

As discussed above, the Clean Air Act sets three requirements for determining the amount of NCPs. First, the NCP is to remove any competitive disadvantage to manufacturers whose engines or vehicles conform to the relevant standard. Second, the penalty must take into account the extent to which actual emissions exceed a standard. Third, the NCP must be increased periodically to create incentives for conformance with the standards.

When EPA determines that NCPs will be available for a standard and specifies the HDE or HDV categories for which the NCP will be provided, a formula will be used to calculate the NCP for nonconforming engines or vehicles. These categories may comprise HDE or HDV subclasses, groups of subclasses, or subdivisions of subclasses. The basic form of the NCP formula will be the same for each HDE or HDV subclass and each pollutant, although the values of parameters in the formula may vary by engine and vehicle subclass and pollutant. There were very few comments on the proposed formula and this final rule adopts the proposal with no significant changes.

As proposed, the NCP formula will incorporate the following elements: (1) the compliance level determined in PCA testing, (2) penalty rates, expressed in dollars per unit of emissions, and (3) annual adjustment factors. Basing the penalty on the compliance level will insure that the NCP takes into account the extent to which actual emissions exceed the applicable standard. The penalty rate, because it is based on projected compliance costs, will remove the competitive advantage of not conforming by eliminating the cost savings associated with nonconformance. Annual adjustment factors will be used to increase the NCP from year to year to provide additional incentives for conformance and keep the penalty in current year dollars.

When a manufacturer elects to pay an NCP, the first step in determining the amount of the NCP will be to calculate the "initial penalty." The initial penalty is the penalty amount that would be paid if the nonconformity occurred in the first year that the penalty was available for a particular standard. To arrive at the penalty for the current year, the initial penalty is multiplied by the annual adjustment factors for each year since the first year the penalty was available. When payment of an NCP is elected in the first year in which the NCP is available, no annual adjustment factor is used in calculating the penalty amount for that year.

### 1. Penalty Rates

EPA will use a combination of a "marginal cost" approach and an "average cost" approach to set the penalty rates. Under a marginal cost approach, the penalty rate for each engine and vehicle category and pollutant combination would be the slope of the steepest segment of an estimated emission control cost curve for the category. The cost curve would depict the relationship between emission control cost and emission levels ranging from the upper limit down to the new standard for each pollutant. Its slope, the marginal cost, would be expressed in terms of cost per unit of emission reduction. If the marginal cost increased continuously as the emission level fell (as might be assumed in a simplified analysis), the steepest slope (greatest marginal cost) would be the slope of the curve at the new standard. However, since the relationship between emission control costs and emission rates (i.e., the marginal cost) may be discontinuous and "lumpy," the greatest marginal cost may instead occur elsewhere. For example, it may be associated with the addition of a significant emission control hardware item such as a catalyst or particulate trap.

Under an average cost approach, the penalty rate for each engine and vehicle category and pollutant combination would be based on an estimate for the category of the expected total incremental compliance cost per engine or vehicle for reducing emission levels from the upper limit to the new standard. The estimate used would be near the upper end of the range of the estimates of the cost of compliance among manufacturers. That total cost of compliance would then be divided by the emission reduction required to meet the new standard, resulting in a penalty rate equal to the average cost per unit of emissions reduction.

The initial penalty can be represented graphically by two linear segments as shown by the dashed lines in Figure 1. This form was chosen in order to satisfy two criteria simultaneously: (1) that the penalty rate near the new standard be steep enough to discourage voluntary noncompliance by manufacturers who are technologically able to conform, and (2) that the initial penalty faced by a technological laggard whose compliance level is significantly above the standard would not be substantially higher than the estimated total incremental cost of compliance with the new standard. Thus, for compliance levels that exceed but remain near the new emission standard, the penalty is based on an estimate of the 90th percentile marginal cost of compliance within the HDE or HDV category. EPA will first estimate the averge marginal cost of compliance with the new standard for the category. EPA will then estimate the 90th percentile marginal cost by multiplying the average marginal cost by a factor, F. The 90th percentile is used in an effort to ensure that few manufacturers will use NCPs out of purely economic considerations. The value of F will be in the range of 1.1 to 1.3 and will be selected by EPA based on the best available cost data. Onan Corporation commented that the value of F should be presumptive at 1.1 unless statistically significant data justifies that it be set higher in the range. EPA has no basis to choose a presumptive value of 1.1, as opposed to any other value in the range, and will select a value in the range of 1.1 to 1.3.

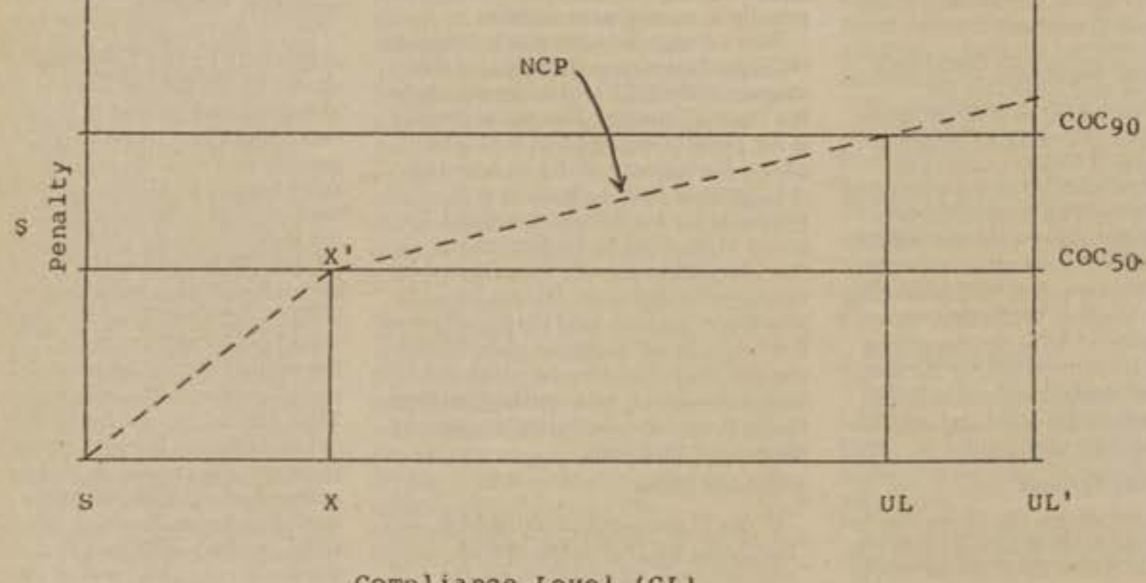
As the compliance level increases above the standard (S in figure 1), the penalty increases at a constant rate up to the emission level (X) at which the penalty equals the estimated average total incremental cost of compliance ($COC_{50}$) for the category. The initial penalty then increases linearly at a constant rate from that point (X') to an amount at the upper limit (UL) equal to EPA's estimate of the 90th percentile total incremental cost of compliance ($COC_{90}$). However, where the upper limit is a prior emissions averaging family limit, as discussed in section E.2. of this preamble, the penalty will increase linearly at the same constant rate from $COC_{90}$ (from the otherwise applicable upper limit, UL) to the value of the prior averaging family upper limit, UL'. In other words, in this case, UL and UL' will represent different values in Figures 1 and 2.

In evaluating the total and marginal costs of compliance with a particular standard under this approach, EPA will assess both manufacturers' and users' cost impacts. Manufacturers' costs include the incremental production costs involved in bringing an engine or vehicle into conformance with a standard and the additional warranty costs of keeping it there. The nonconforming manufacturer is avoiding these costs. EPA requested comments on what should be included in manufacturers' incremental production costs. Several manufacturers commented that engineering and development costs should be included in setting the penalty rates to prevent a nonconforming manufacturer that never spends these costs and elects to use NCPs from being placed at a competitive advantage. EPA agrees that such costs must be included in the NCP to protect against the possibility that some manufacturers might choose NCPs to avoid incurring such costs. As already discussed, EPA cannot allow a manufacturer that uses NCPs to gain a competitive advantage. General Motors commented, however, that a manufacturer in nonconformance has in all likelihood expended considerable engineering and development costs and should not have to pay these costs again in the form of an NCP. EPA agrees that a manufacturer should not be required to pay these costs twice. However, it would be difficult for EPA to be certain whether a manufacturer did indeed already spend these costs. Therefore, EPA will assume that a nonconforming manufacturer did not spend engineering and development costs, and they will be included in the NCP. However, EPA will include in the Phase II NCP NPRM a proposal that would allow a manufacturer that pays an NCP to be refunded a portion of the NCP if that manufacturer subsequently certifies the nonconforming configuration, thereby demonstrating that engineering and development costs were indeed expended.



Figure 1

Penalty vs. Compliance Level



Users' costs may include the present value of any fuel economy penalty, requirements for unleaded fuel, and changes in maintenance costs associated with operating a conforming engine or vehicle over its lifetime. To the extent that these cost impacts are known by potential buyers, a purchaser should be willing to pay more for an engine or vehicle with lower total user costs. Therefore, in order to remove a manufacturer's economic incentive for nonconformance and to prevent manufacturers of conforming engines or vehicles from being placed at a competitive disadvantage, the NCP must also reflect the user cost increase. Mack Truck commented that fuel economy penalties could be significant and should be included in the penalty calculations. EPA agrees and will include these penalties in the users' costs.

The data base used by EPA to establish the average cost of compliance and the penalty rate factors in a specific NCP rulemaking will be the cost data used by EPA in setting the emission standard for which the NCP will be available. However, when the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA could augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

Most cost analyses performed during the standard-setting process do not estimate the marginal cost of compliance. Doing so would require much more detailed knowledge of the emission control alternatives and costs facing manufacturers and the resulting impacts on the cost of ownership than is typically available. Therefore, it may not always be possible to use marginal costs exclusively. When use of marginal costs is not possible, EPA will estimate these marginal costs with the best available cost and emission performance data.

General Motors commented that if NCPs are determined by the Internal Revenue Service (IRS) not to be a tax deductible business operating expense, EPA should adjust the cost of compliance values since a manufacturer's compliance costs are ordinarily offset in part by tax deductions for such expenses. EPA has requested a ruling from the IRS on this matter. If the IRS rules that NCPs are tax deductible, EPA will use the cost of compliance values as described in this preamble; if they are not tax deductible, EPA will adjust the cost of compliance values.

*2. Annual adjustments*

Annual adjustment factors will be used to increase the amount of the nonconformance penalty from year to year, beginning with the second year that the NCP is available for a particular standard. The penalty per engine or vehicle in year n will be equal to the "initial penalty" multiplied by the cumulative product of the annual adjustment factors for years two through n. The annual adjustment factor will take into account inflation, the number of years the NCP has been available for the particular standard, and the fraction of subclass production for which NCPs have been assessed. The formula for the annual adjustment factor for year i (i>2) is as follows:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1-(frac_{i-1})}\right]^i$$

$A^i = 0.10$ for $i = 2$
$A^i = 0.08$ for $i > 3$

In the formula, $I_{i-1}$ is the rate of increase in an appropriate index of inflation during year i-1. EPA requested comments on which inflation index would be appropriate. Several manufacturers commented that the "overall consumer price index" should be used because it closely relates to customer costs. EPA has decided to use this index, but may address in a subsequent rulemaking action whether it would be more appropriate to use an inflation index more representative of the heavy-duty engine/vehicle industry (for example, the Bureau of Labor Statistics Fleet Activity Cost Index). The inflation increase is expressed as a decimal percentage (e.g., ten percent would be expressed as 0.10). The inflation rate will be included in the formula to insure that each year's penalty reflects estimated increases in compliance costs as a result of inflation during the period when the NCP has been available.

The variable $A_i$ is the usage adjustment factor, which affects the impact of the prior year's NCP usage on the size of the annual adjustment factor. The variable "$frac_{i-1}$" in the formula is the fraction of NCP usage for the previous year. It will be calculated separately for each category of engines or vehicles and is the ratio of (1) the total number of HDEs or HDVs for which an NCP will be paid in year i-1 to (2) the total number of HDEs or HDVs that will be introduced into commerce in year i-1. If $frac_{i-1}$ is greater than 0.05, $frac_{i-1}$ would be set equal to 0.50 in calculating $AAF_i$.

The formula for $AFF_i$ is structured so that the penalty increases as $frac_{i-1}$ increases and, for any given value of $frac_{i-1}$, the increase in the penalty will be greater in later years than in the initial years of availability. This structure was chosen in order to provide adequate incentives for eventual compliance. If the initial penalty were so low that many engines or vehicles were produced under the NCP, a relatively high value of $frac_{i-1}$ will protect the environment by increasing the penalty substantially in the next year and creating greater incentives for conformance. If, on the other hand, NCP usage is low, the HDE or HDV catetory is protected by a much smaller annual increase in the penalty.

The NCP usage fraction for calculating the next year's penalty will include actual NCP usage through March 31 of the current model year and EPA's estimate of additional usage for the remainder of the current model year. Each previous year's usage fraction will be corrected to reflect actual year-end usage of NCP's and this corrected AAF will be used in establishing the NCP for future years. The correction of the previous year's annual adjustment factor will not affect the previous year's penalty. Thus, when the running product of the annual adjustment factor is calculated to determine an NCP for year n, $AAF_n$ will be based on the projected value of $frac_{n-1}$ and all other $AAF_i$, (for $i < n$) will be calculated using the final corrected values of $frac_{i-1}$.

*3. NCP Formula*

The complete NCP formula incorporates both the initial penalty and the annual adjustment factors. It is given below along with definitions for the variables. As discussed in the penalty rate section above, the initial penalty is decribed by two linear segments (Figure 1). A separate formula is used for each segment. As described for Case 1 and Case 2 below, the formula used depends on the value of the compliance level, CL, determined in PCA testing. Figure 2 illustrates the relationship between an initial penalty, $NCP_1$, and a subsequent year's penalty, $NCP_n$.

*Case (1):* If the compliance level (CL) is greater than S and less than or equal to X (e.g., point $CL_1$ in figure 2), then:

$$NCP_n = (PR_1)(CL - S) \left( \prod_{i=1}^{n} AAF_i \right)$$

where:

$PR_1 = (F)(MC_{50})$

*Case (2):* If the compliance level is greater than X and less than or equal to the upper limit as determined by § 86.1104–87 (e.g., point $CL_2$ in figure 2), then:

$$NCP_n = (COC_{50} + (PR_2)(CL - X)) \left( \prod_{i=1}^{n} AAF_i \right)$$

where:

$$PR_2 = \frac{COC_{90} - COC_{50}}{UL - X}$$

In Case (1) or Case (2), $AAF_i$ has the following values:

If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$

If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i \left[ \frac{1}{1 - (frac_{i-1})} \right]^i$$

If $frac_{i-1} > 0.50$, then $frac_{i-1}$ would be set equal to 0.50.

In the first year, $AAF_1 = 1$

The terms in the above formulas have the following meanings and values:

$NCP_n$ = NCP for year n for each engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by § 86.1104–87. Except, if the upper limit is determined by § 86.1104–87(c), the value of UL in case (2) will be the prior emission standard.

UL' = Upper limit as determined by § 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which $NCP_1$ equals $COC_{50}$

$$X = \left[ \frac{COC_{50}}{(F)(MC_{50})} \right] + S$$

$PR_1$ = Penalty rate for $CL < X$

$PR_2$ = Penalty rate for $X < CL <$ applicable upper limit

$\prod_{i=1}^{n} AAF_i$ = Running Product, i.e., $(AAF_1) \times (AAF_2) \times .. \times (AAF_n)$

i = Index representing a year

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n = 1 for the first year that the NCP is available; . . . n = n for the nth year that the NCP is available

$COC_{50}$ = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

$COC_{90}$ = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

$MC_{50}$ = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

$AAF_i$ = Annual adjustment factor in year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (i−1)

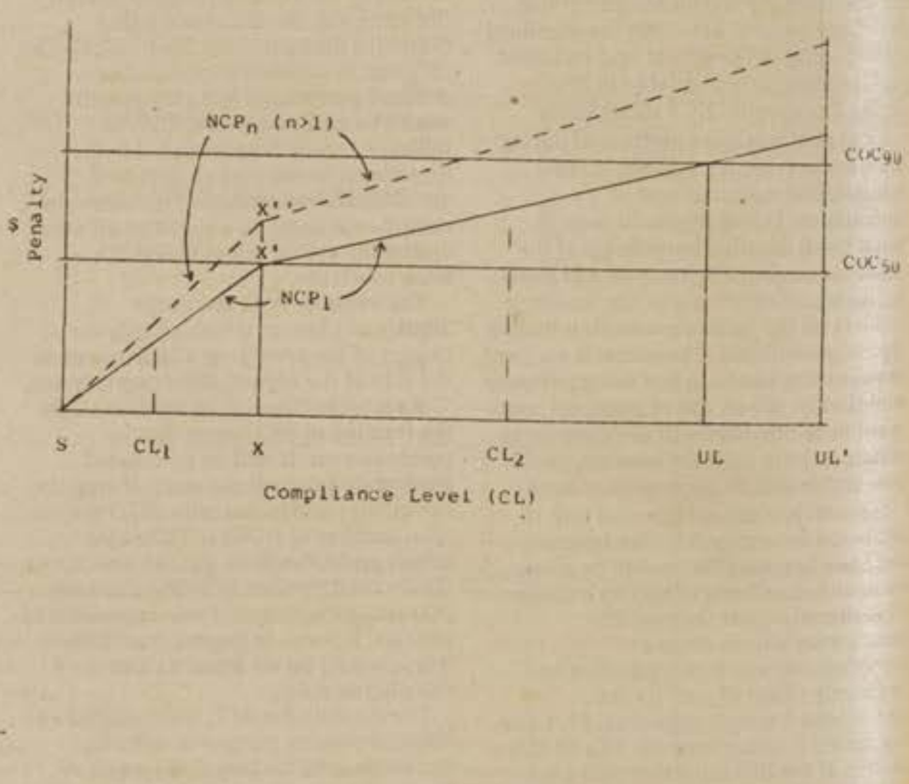
$A_i$ = Usage adjustment factor in year i: $A_i = 0.10$ for $i = 2$; $A_i = 0.08$ for $i > 2$

$I_i$ = Percentage increase in overall consumer price index in year i

Onan supported EPA's proposal to use average costs as opposed to 50th percentile costs in determining $COC_{50}$, $MC_{50}$ and F. The final rule incorporates that proposal.

Figure 2

Penalty vs. Compliance Level



## G. Administrative Designation

Under the criteria provided in Executive Order 12291, the Administrator has determined that this regulation is "non-major" and therefore not subject to the requirement of a Regulatory Impact Analysis. This determination is based on the following:

(1) The NCP program will not result in an annual adverse effect on the economy of $100 million or more. The NCP merely provides an economically reasonable alternative to other possible actions, at least as costly as NCPs, that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the ECONOMIC IMPACT section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers relief from the inability to market nonconforming HDEs or HDVs. Presently a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards, has only two alternatives: fix the nonconforming configuration or prevent the HDE or HDV's introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent its introduction into commerce. NCPs provide relief from these disruptions. Therefore, 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.

As required by Executive Order 12291, this Final Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and the EPA's response to those comments are available for inspection in the public docket for this rulemaking.

## *H. Economic Impact*

Because of the optional nature of the use of NCPs, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their capability to comply with emission standards. If no HDE or HDV manufacturers elects to use NCPs, these manufacturers or the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only course of action that would allow it to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

## I. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some HDE and/or HDV manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are available and that they will be used by less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current levels, but from levels that would otherwise occur from reduced emission standard without NCPs.

Because emission impacts are anticipated to be very small, if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis has been made regarding this rule.

**J. Compliance with Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether this regulation will have a significant economic impact on a substantial number of small business entities. None of the affected entitles could be classified as a small business. (Even if some were considered small, there would not be a substantial number of those.) Morever, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, I certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

**K. Information Collection Requirements**

This rule (Phase I) requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. However, these requirements will not become effective until the Phase II NCP rulemaking. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, requires that reporting and recordkeeping requirements be approved by OMB before they are imposed on the public. The information collection requirements in this rule will be submitted to OMB under the Paperwork Reduction Act during the proposal for the Phase II NCP rulemaking, at which time EPA will better be able to predict the extent of NCP usage.

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

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

Dated: August 23, 1985.

Lee M. Thomas,

*Administrator.*

**PART 86—[AMENDED]**

For the reasons set forth in the preamble, Part 86, Subparts A, K and L, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 86 is revised to read as follows:

Authority: Secs. 206(g) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7525(g), 7601.

2. Paragraph (e)(3)(ii)(A) of § 86.085–22 of Subpart A is revised to read as follows:

**§ 86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit, adequacy of limits, and physically adjustable ranges.**

* * * * *

(e) * * *

(3) * * *

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under Subpart G, K or L (Selective Enforcement Audit and Production Compliance Audit) only the actual setting to which the parameter is adjusted during production.

* * * * *

3. The introductory text of paragraph (e), paragraphs (e)(1) (iii) through (vii), (e)(5), (e)(6)(i), and (e)(7) of § 86.087–30 of Subpart A are revised to read as follows:

**§ 86.087–30 Certification.**

* * * * *

(e) For light-duty trucks, heavy-duty engines, and heavy-duty vehicles

(1) * * *

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009 or § 86.1112–87; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009 or § 86.1112–87; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 and in a warrant or court order presented to the manufacturer or the party in charge of the facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, 86.1013, 86.1107(a), 86.1108–87, 86.1110–87, 86.1111–87, 86.1112–87 or § 86.1113–87.

* * * * *

(5) In any case in which certification of a light-duty truck, heavy-duty engine, or heavy-duty vehicle is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 or § 86.1109–87 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) * * *

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87, and

* * * * *

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87.

4. Section 86.1002–84 of Subpart K is amended by adding the following definition:

**§ 86.1002–84 Definitions.**

* * * * *

"Compliance level" means an emission level determined during a Production Compliance Audit pursuant to Subpart L of this Part.

* * * * *

5. Paragraph (b)(2) of § 86.1008–84 is revised to read as follows:

**§ 86.1008–84 Test procedures.**

* * * * *

(b) * * *

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all

other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

* * * * *

6. Paragraph (d)(2) of § 86.1009–84 is revised to read as follows:

**§ 86.1009–84 Calculation and reporting of test results.**

* * * * *

(d) * * *

(2) The applicable standards or compliance levels against which the engines or vehicles were tested;

* * * * *

7. Paragraphs (b) and (c) of § 86.1010–84 are revised to read as follows:

**§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.**

* * * * *

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to paragraph 86.1009–84(c), for one or more of the applicable exhaust pollutants, exceed the applicable emission standard or compliance level.

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the past decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant shall not be considered any further for the purposes of the audit.

* * * * *

8. Paragraphs (i)(1)(ii), (j)(2), (k)(2) and (m) of § 86.1012–84 are revised to read as follows:

**§ 86.1012–84 Suspension and revocation of certificates of conformity.**

* * * * *

(i) * * *

(1) * * *

(ii) Demonstrate that the engine or vehicle conforms to applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

* * * * *

(j) * * *

(2) Demonstrate that the engine or vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines or vehicles selected from normal production runs of that engine or vehicle configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with the conditions specified in the initial test order. If the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to be in conformance with the applicable standards or compliance levels through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (h) of this section.

(k) * * *

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator has so notifed the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards or compliance levels, if applicable, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration, provided that the manufacturer has satisfied the testing requirements of paragraph (k)(1) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

* * * * *

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.087–30(e), and prior to the commencement of a hearing under § 86.1014–84, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

* * * * *

9. Paragraphs (a) and (d)(2) of § 86.1014–84 are revised to read as follows:

**§ 86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.**

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing pursuant to § 86.087–30 (e)(6)(i), § 86.087–30(e)(7), or § 86.1012–84(1).

* * * * *

(d) * * *

(2) In the case of a hearing requested under § 86.087–30(e)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 86.087–30(e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for the hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.1003–84 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request

for a hearing and suspending the certificate of conformity.

* * * * *

10. The table of contents of Subpart L is added as follows:

**Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks**



11. Subpart L is added to read as follows:

## Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

### § 86.1101-87 Applicability.

The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

### § 86.1102-87 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given then in the Act.

"Compliance level" means the deteriorated pollutant emissions level at the 60th percentile point for a population of heavy-duty engines or heavy-duty vehicles subject to Production Compliance Audit testing pursuant to the requirements of this subpart. A compliance level can only be determined for a pollutant for which an upper limit has been established in this subpart.

"Configuration" means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

"NCP" means a nonconformance penalty as described in section 206(g) of the Clean Air Act and in this subpart.

"PCA" means a Production Compliance Audit as described in § 86.1106-87 of this subpart.

"Subclass" means a classification of heavy-duty engines or heavy-duty vehicles based on such factors as gross vehicle weight rating, fuel usage, vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

Light-duty gasoline trucks (6,001-8,500 lb. GVW)
Light-duty diesel trucks (6,001-8,500 lb. GVW)
Light heavy-duty gasoline engines (for use in vehicles of 8,501-14,000 lb. GVW)
Heavy heavy-duty gasoline engines (for use in vehicles of 14,001 lb. and above GVW)
Light heavy-duty diesel engines (see § 86.085-2(a)(1))
Medium heavy-duty diesel engines (see § 86.085-2(a)(2))
Heavy heavy-duty diesel engines (see § 86.085-2(a)(3))

"Test Sample" means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected to receive emission testing.

"Upper limit" means the emission level for a specific pollutant above which a certificate of conformity may not be issued or may be suspended or revoked.

### § 86.1103-86 Criteria for availability of nonconformance penalties.

(a) EPA shall establish for each subclass of heavy-duty engines and heavy-duty vehicles (other than motorcycles), an NCP for a motor vehicle pollutant, when any new or revised emission standard is more stringent than the previous standard for the pollutant, or when an existing standard for that pollutant becomes more difficult to achieve because of a new or revised standard, provided that EPA finds:

(1) That for such subclass of engines or vehicles, substantial work will be required to meet the standard for which the NCP is offered, and

(2) That there is likely to be a technological laggard.

(b) Substantial work, as used in paragraph (a)(1) of this section, means the application of technology not previously used in an engine or vehicle class or subclass, or the significant modification of existing technology or design parameters, needed to bring the vehicle or engine into compliance with either the more stringent new or revised standard or an existing standard which becomes more difficult to achieve because of a new or revised standard.

### § 86.1104-87 Determination of upper limits.

(a) The upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103-87, shall be the previous pollutant emission standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a), the upper limit will be developed by EPA during rulemaking.

(c) If a manufacturer participates in the emissions averaging program and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a).

### § 86.1105-87 [Reserved]

### § 86.1106-87 Production compliance auditing.

For a model year in which upper limits for heavy-duty engine or heavy-duty vehicle emission standards for one or more exhaust pollutants are specified in § 86.1105-87, a manufacturer may elect to conduct a Production Compliance Audit (PCA) for each engine or vehicle configuration satisfying the following conditions:

(a) Certification test results, pursuant to § 86.082-23, exceed the emission standard for a particular pollutant but do not exceed the upper limit established for that pollutant. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the specified engine family, *provided that:*

(1) The manufacturer must agree to conduct a PCA of those engines or vehicles;

(2) PCA testing must be conducted on the same configuration tested in certification;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly-line production of the specified engine or vehicle configuration, unless that period is extended by the Administrator;

(4) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level for the engine or vehicle configuration of (a)(2) exceeds the upper limit as determined by the PCA;

(5) If the compliance level determined in the PCA is below the emission standard, no NCP will be offered, and all appropriate qualifications will be removed from the qualified certificate of conformity.

(b) An engine or vehicle configuration fails a Selective Enforcement Audit (SEA) under subpart K of 40 CFR Part 86 with respect to the standard for a particular pollutant but does not fail with respect to the upper limit established for that pollutant, and no NCP has been previously assessed for that configuration, *provided that:*

(1) The manufacturer must submit a written report to the Administrator within five (5) days after failure to pass the audit containing the following:

(i) A statement that the manufacturer does not intend, at that time, to make any engine and/or emission control system design changes that may remedy the nonconformity; and

(ii) A request from the manufacturer to conduct the PCA, including the date the testing will begin;

(2) Failure to submit the report within five (5) days after the SEA failure will result in the forfeiture of the NCP option, unless a satisfactory justification for the delay is provided to the Administrator;

(3) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the SEA failure unless extended by the Administrator; otherwise, the manufacturer may forfeit the option to elect an NCP;

(4) PCA testing must be conducted on the same configuration that failed the SEA;

(5) Test results from the SEA, together with any additional test results required during the PCA, will be used in establishing a compliance level for the configuration pursuant to § 86.1112–87(a); and

(6) The manufacturer, upon approval by the Administrator to conduct a PCA on a failed SEA engine or vehicle configuration, must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the SEA failure, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day of the SEA failure, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level of the engine or vehicle configuration exceeds the upper limit as determined by the PCA.

(c) An engine or vehicle configuration, for which an NCP has been previously assessed for a particular pollutant, either passes an SEA with respect to the particular pollutant standard, fails an SEA with respect to the particular pollutant standard but not the previous compliance level, or fails an SEA with respect to the previous compliance level but not the associated upper limit, *provided that:*

(1) The manufacturer must submit a written statement to the Administrator within five (5) days of the conclusion of the SEA requesting a PCA, including the date the PCA testing will begin; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(2) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the conclusion of the SEA unless the period is extended by the Administrator; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(3) PCA testing must be conducted on the same configuration tested during the SEA, and all conditions in the SEA test order must apply to the PCA;

(4) Test results for the SEA, together with any additional test results required during the PCA, will be used in establishing a new compliance level for the configuration pursuant to § 86.1112–87(a);

(5) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the conclusion of the SEA, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day after the conclusion of the SEA, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA;

(6) A previously assessed NCP will be terminated and no NCP will be established as a result of the new PCA if the compliance level is determined to be below the applicable emission standards.

(d) The implementation of a production running change that causes the emission level for a particular pollutant to be either above the emission standard but below the associated upper limit for a vehicle or engine configuration for which an NCP has not been previously assessed, or below the associated upper limit for a vehicle or engine configuration for which an NCP has been previously assessed, regardless of the previous compliance level. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the engine or vehicle configuration resulting from the running change, *provided that:*

(1) The manufacturer must submit a written report to the Administrator outlining the reason for the running change and the date the manufacturer will begin PCA testing;

(2) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly line production of the engine or vehicle configuration resulting from the running change unless that period is extended by the Administrator; and

(4) If the compliance level is determined to be below the applicable emission standard, a previously

assessed NCP will be terminated, an NCP will not be established as a result of the PCA testing, and all qualifications will be removed from the qualified certificate of conformity.

(e) The following requirements are applicable to each PCA under this subpart.

(1) The manufacturer shall make the following documents available to EPA Enforcement Officers upon request:

(i) A properly filed and current application for certification, following the format prescribed by the EPA for the appropriate model year; and

(ii) A copy of the shop manual and dealer service bulletins for the configurations being tested.

(2) Only one mechanic at a time per engine or vehicle shall make authorized checks, adjustments, or repairs, unless a particular check, adjustment, or repair requires a second mechanic as indicated in the shop manual or dealer service bulletins.

(3) A mechanic shall not perform any check, adjustment, or repair without an Enforcement Officer present unless otherwise authorized.

(4) The manufacturer shall utilize only those tools and test equipment utilized by its dealers or those dealers using its engines when performing authorized checks, adjustments, or repairs.

### § 86.1107-87 Testing by the Administrator.

(a) The Administrator may require that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.1110-87 and submitted to him at such place as he may designate for the purpose of conducting emission tests in accordance with § 86.1111-87 to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations of this subpart.

(b)(1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will comprise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data, provided that if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If the Administrator determines that testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator shall:

(1) Notify the manufacturer in writing of his determination that the manufacturer's test facility is inappropriate for conducting the tests required by this subpart and the reasons therefore; and

(2) Reinstate any manufacturer's data only upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and that these changes have resolved the reasons for disqualification.

### § 86.1108-87 Maintenance of records.

(a) The manufacturer of any new gasoline-fueled or diesel heavy-duty engine or heavy-duty vehicle subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1111-87, pursuant to PCA testing under this subpart, specifically:

(i) If testing heavy-duty gasoline engines, the equipment requirements specified in §§ 86.1306-84 and 86.1506-84 of this part.

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306-84, 86.1506-84, 86.879-6, 86.879-8 and 86.879-9 of this part;

(iii) If testing light-duty gasoline-fueled trucks, the equipment requirements specified in §§ 86.106 (excluding all references to particulate emission testing) and 86.1506-84 of this part; and

(iv) If testing light-duty diesel trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative emission testing) of this part.

(2) *Individual records.* These records pertain to each Production Compliance Audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the Production Compliance Audit;

(iv) A record and description of any repair performed, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all personnel involved in the supervision and performance of the repair;

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically—

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1342-84 and 86.1542-84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1342-84, 86.1542-84, and 86.879-10; (§ 86.337-79 for Subpart D testing only).

(C) If testing light-duty gasoline fueled trucks, the record requirements specified in §§ 86.142 (excluding all references to diesel vehicles) and 86.1542-84; and

(D) If the testing light-duty diesel trucks, the record requirements specified in § 86.142; and

(vii) A brief description of any significant Production Compliance Audit events commencing with the test engine or vehicle selection process, but not described by any subparagraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(3) The manufacturer shall record the test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that was used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of six (6) years after completion of all testing. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

### § 86.1109.87 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart, EPA Enforcement Officers are authorized to enter any of the following (during operating hours and upon presentation of credentials):

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a PCA request or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted.

(2) To inspect and monitor any aspect of engine or vehicle test procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, repairs, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the manufacturer conducting the PCA to make arrangement with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA, whether or not the manufacturer controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer conducting the PCA or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) A manufacturer that conducts a PCA shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section, the following definitions are applicable:

(1) "Presentation of Credentials" means display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine or vehicle storage areas or facilities are concerned, "operating hours" means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing repair, service accumulation, preparation or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and making personnel of the facility being inspected available during their working hours on an EPA Enforcement Officer's request to inform the EPA Enforcement Officer of how the facility operates and to answer his or her questions. Any employee whom an EPA Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

### § 86.1110-87 Sample selection.

(a) Engines or vehicles comprising a test sample which are required to be tested pursuant to a PCA in accordance with this subpart will be selected at the location and in the manner specified by EPA. If a manufacturer determines that the test engines or vehicles cannot be selected in the manner specified by EPA, an alternative selection procedure may be employed, provided that the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure.

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production processes for engines or vehicles to be distributed into commerce. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, EPA will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other engines or vehicles of that configuration.

(d) The EPA Enforcement Officers may specify that they, rather than the manufacturer, will select the test engines or vehicles.

(e) The order in which test engines or vehicles are selected determines the order in which test results are to be used in applying the PCA testing plan in accordance with § 86.1112-87.

(f) The manufacturer shall keep on hand all engines or vehicles comprising the test sample until such time as a compliance level is determined in accordance with § 86.1112–87(a) except that the manufacturer may ship any tested engine or vehicle which has not failed in accordance with § 86.1112–87(f)(1). However, once the manufacturer ships any test engine or vehicle, it relinquishes the prerogative to conduct retests as provided in § 86.1111–87(i).

**§ 86.1111–87 Test procedures for PCA testing.**

(a)(1) For heavy-duty engines, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts N, I, and P of this part.

(2) For heavy-duty vehicles, the prescribed test procedure for PCA testing is described in Subpart M of this part.

(3) For light-duty trucks, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts B and P of this part.

(4) When testing light-duty trucks, the following exceptions to the test procedures in Subpart B are applicable:

(i) The manufacturer may use gasoline test fuel meeting the specifications of paragraph (a) of § 86.113 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate midvolume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning on PCA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning has been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph (a) of § 86.133.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e) of § 86.135, provided that the slave tires are the same size as the drive wheel tires.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140:

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, $CO_2$ and $NO_x$ analyzers. [Power is normally left on for infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.]

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142, since the records required therein are provided under other provisions of this subpart.

(ix) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5 ± 0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section.

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(4)(ii) of this section if approved in advance by the Administrator.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing pursuant to a PCA request unless the adjustment, repair, preparation, modification, or tests are documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed on all engines or vehicles produced or unless these adjustments or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit and Production. Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–2(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) Prior to performing emission testing on a PCA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration tested during PCA. Prior to performing emission testing on a PCA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration tested during PCA. Service or mileage accumulation may be performed in any manner the manufacturer desires.

(d) No maintenance shall be performed on test engines or vehicles after selection for testing nor will any test engine or vehicle substitution or replacement be allowed, unless requested of and approved by the Administrator in advance of the performance of any maintenance or engine or vehicle substitution.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility or other location to meet any other requirements of this subpart. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection, except that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission tests because of engine or vehicle malfunction, the manufacturer may request that the Administrator authorize the repair of the engine or vehicle. If the engine or vehicle cannot be repaired expeditiously, EPA may delete it from the test sequence.

(g)(1) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of 30,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24 hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of less than 30,000, as made in their respective Applications for Certification, shall complete emission testing at one engine per 24 hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24 hour period, including voided tests.

(4) The Administrator may approve a longer period of time for conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to insure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Production Compliance Audit once a compliance level has been established in accordance with § 86.1112–87 based on the first test on each engine or vehicle. The Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

### § 86.1112–87 Determining the compliance level and reporting of test results.

(a) A manufacturer that has elected to conduct a PCA in accordance with § 86.1106–87 may establish the compliance level for a pollutant for any engine or vehicle configuration by using the primary PCA sampling plan or either of two optional reduced PCA sampling plans (the fixed reduced sampling plan or the sequential reduced sampling plan) described below. A manufacturer that uses either of the two optional reduced PCA sampling plans may elect to continue testing and establish a compliance level under the primary PCA sampling plan.

(1) A manufacturer that elects to conduct a PCA for a pollutant using the primary PCA sampling plan shall:

(i) Conduct emission tests on 24 engines or vehicles in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated. If the PCA follows an SEA failure, the number of additional tests conducted shall be the difference between 24 and the number of engines or vehicles tested in the SEA. If 24 or more engines or vehicles were tested in the SEA, no additional tests shall be conducted; and

(ii) Rank the final deteriorated test results, as defined by paragraph (e) of this section, obtained for that pollutant in order from the lowest to the highest value. If the PCA follows an SEA failure, all SEA test results for that pollutant shall be included in this ranking.

(iii) The compliance level for that pollutant is the final deteriorated test result in the sequence determined from Table 1 of Appendix XII of these regulations.

(2) A manufacturer that elects to conduct a PCA for a pollutant using the fixed reduced PCA sampling plan shall:

(i) Select a sample size between 3 and 23 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA; and

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in (a)(2)(ii) and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 2 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(3) A manufacturer that elects to conduct a PCA for a pollutant using the sequential reduced PCA sampling plan shall perform the following:

(i) Select a sample size of 4, 8, 12, 16 or 20 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA.

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in (a)(3)(ii) and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 3 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(iv) After calculating a compliance level in accordance with (a)(3)(iii), a manufacturer may elect to increase the sample size by 4 engines or vehicles, or a multiple thereof, up to the maximum, including SEA engines or vehicles if any, of 20. Upon that election, the manufacturer shall add the additional engines or vehicles to the sample and perform (a)(3)(ii) and (a)(3)(iii). This election may be repeated if appropriate. A compliance level determined under this election shall replace a previously determined compliance level.

(b) A fail decision is reached with respect to the upper limit when the compliance level determined in paragraph (a) of this section exceeds the applicable upper limit.

(c) Initial test results are calculated following the Federal Test Procedure specified in § 86.1111–87(a).

(d) Final test results are calculated by summing the initial test results derived in paragraph (c) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding in accordance with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(e) Final deteriorated test results. (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to Subparts B, I, N, or P of this part are calculated by applying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is multiplicative and it is less than one, that deterioration factor will be one. If the deterioration factor computed during the certification process is additive and it is less than zero, that deterioration factor will be zero.

(2) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(f) A failed engine or vehicle is one whose final deteriorated test results, for one or more of the applicable exhaust pollutants, exceed:

(1) The applicable emission standard, or

(2) The compliance level established in paragraph (b) of this section.

(g) Within five working days after completion of PCA testing of all engines or vehicles, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the engines or vehicles were tested;

(3) Deterioration factors for the engine family to which the selected configuration belongs;

(4) A description of the engine or vehicle and any emission-related component selection method used;

(5) For each test conducted:

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification,

(B) Year, make and build date,

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles; and

(v) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or heavy-duty vehicles being manufactured by the manufacturer do in fact conform with the regulations of this subpart; and

(6) The following statement and endorsement:

This report is submitted pursuant to section 206 of the Clean Air Act. This Production Compliance Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 et seq. All data and information reported herein is, to the best of

____________________—'s

(Company Name)———

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

____________________

(Authorized Company Representative)

**§ 86.1113–87 Calculation and payment of penalty.**

(a) The NCP for each engine or vehicle for which a compliance level has been determined under § 86.1112–87 is calculated according to the formula in paragraph (a)(1) or (a)(2) of this section depending on the value of the compliance level. Each formula contains an annual adjustment factor ($AAF_i$) which is defined in paragraph (a)(3) of this section. Other terms in the formulas are defined in paragraph (a)(4) of this section.

(1) If the compliance level (CL) is greater than the standard and less than or equal to X (e.g., point $CL_1$ in figure 1), then:

$$NCP_n = (PR_1)(CL - S)\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$PR_1 = (F)(MC_{50})$

(2) If the compliance level is greater than X and less than or equal to the upper limit as determined by § 86.1104–87 (e.g., point $CL_2$ in figure 1), then:

$$NCP_n = (COC_{50} + (PR_2)(CL - X))\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

$$PR_2 = \frac{COC_{90} - COC_{50}}{UL - X}$$

(3) $AAF_i$ has the following values:

(i) If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$

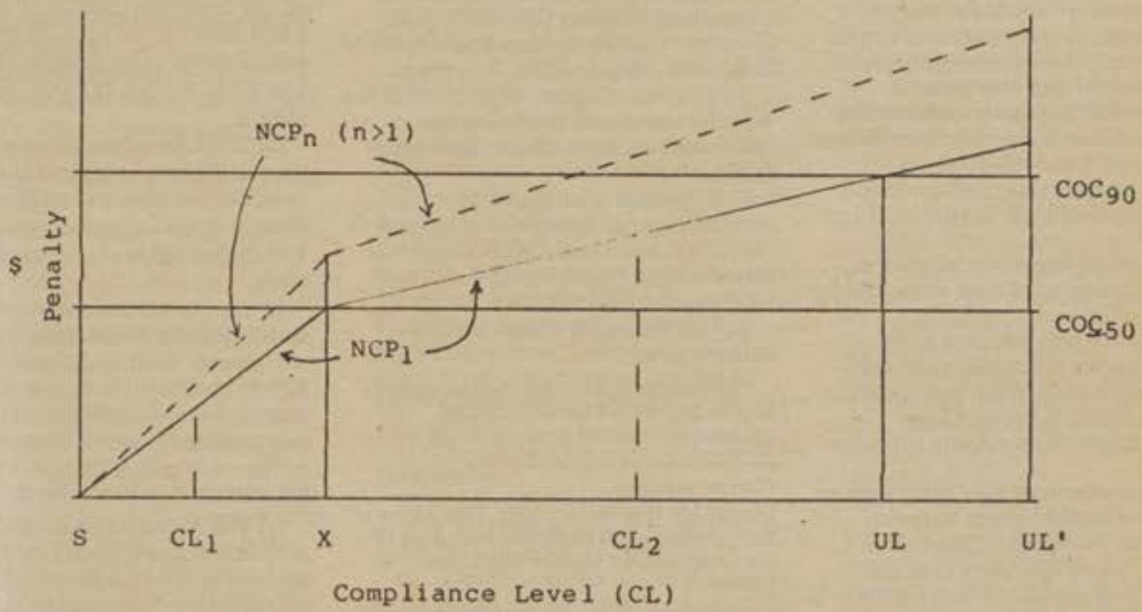
(ii) If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i\left[\frac{1}{1 - (frac_{i-1})}\right]^i$$

-52-

Figure 1

Penalty vs. Compliance Level




If $frac_{i-1} > 0.50$, then $frac_{i-1}$ will be set equal to 0.50.

(iii) $AAF_1 = 1$

(iv) In calculating the NCP for year n, the value of $frac_{i-1}$ for $i=n$ will include actual NCP usage through March 31 of model year n–1 and EPA's estimate of additional usage for the remainder of model year n–1. The value of $frac_{i-1}$ will be corrected to reflect actual year end usage of NCPs and a corrected $AAF_i$ will be used to establish NCPs in future years. The correction of the previous year's AAF will not affect the previous year's penalty.

(4) The terms in the above formulas have the following meanings and values which may be determined separately for each subclass and pollutant for which an NCP is offered:

$NCP_n$ = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by § 86.1104–87. Except, if the upper limit is determined by § 86.1104–87(c), the value of UL in paragraph (a)(2) of this section shall be the prior emission standard for that pollutant.

UL' = Upper limit as determined by § 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which $NCP_1$ equals $COC_{50}$

$$X = \left( \frac{COC_{50}}{(F)(MC_{50})} \right) + S$$

$PR_1$ = Penalty rate when CL<X

$PR_2$ = Penalty rate when X<CL< applicable upper limit

$\prod_{i=1}^{n} AAF_i$ = Running product, i.e., $(AAF_1)x(AAF_2)x. .x(AAF_n)$

i = An index representing a year

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available;. . . n=n for the nth year that the NCP is available

$COC_{50}$ = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

$COC_{90}$ = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

$MC_{50}$ = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

$AAF_i$ = Annual adjustment factor for year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i–1)

$A_i$ = Usage adjustment factor in year i: $A_i = 0.10$ for $i=2$; $A_i = 0.08$ for $i>2$

$I_i$ = Percentage increase in overcome consumer price index in year i

(5) The values of $COC_{50}$, $COC_{90}$, $MC_{50}$ and F will be determined for each applicable subclass by EPA based on the cost data used by EPA in setting the applicable emission standard. However, where the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA may

augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

(6) Any NCP calculated under paragraph (a) of this section will be rounded to the nearest dollar in accordance with ASTM E29-67.

(b) The NCP determined in paragraph (a) of this section is assessed against all those engines or vehicles of the nonconforming configuration or engine family produced at all assembly plants and distributed into commerce—

(1) Since the beginning of the model year in the case of a certification failure described by § 86.1106-87(a).

(2) Beginning ten days after an SEA failure described by § 86.1106-87 (b) or (c).

(3) Following implementation of a production running change described by § 86.1106-87(d).

(c) The NCP will continue to be assessed during the model year, until such time, if any, that the configuration or engine family is brought into conformance with applicable emission standards.

(d) A manufacturer may carry over an NCP from a model year to the next model year. There is no limit to the number of years that carryover can continue. The amount of the penalty will increase each year according to paragraph (a).

(e) The Administrator shall notify the manufacturer in writing of the nonconformance penalty established under paragraph (a) of this section after the completion of the PCA under § 86.1112-87.

(f) A manufacturer may request a hearing under § 86.1115-87 as to whether the compliance level (including a compliance level in excess of the upper limit) was determined in accordance with the procedures in § 86.1112-87(a) or whether the nonconformance penalty was calculated in accordance with the procedures in § 86.1113-87(a). If a nonconformance penalty has been established, such hearing must be requested within fifteen (15) days or such other period as may be allowed by the Administrator after the notification of the nonconformance penalty. If a manufacturer wishes to challenge a compliance level in excess of the upper limit, he must request a hearing within fifteen (15) days or such other period as may be allowed by the Administrator after the completion of the Production Compliance Audit.

(g)(1) The nonconformance penalty or penalties assessed under this subpart must be paid within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. Payment must be made to the United States Treasury and delivered to: Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(2) The manufacturer shall provide the Administrator with the following information along with payment under (g)(1):

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations.

(ii) The following statement and endorsement:

This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

____________________—'s

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

______________________________

(Authorized Company Representative)

(3) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(2) of this section.

### § 86.1114-87 Suspension and voiding of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (f) of § 86.1112-87 effective from the time that a fail decision is made for that engine or vehicle.

(b) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer shall take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine or vehicle conforms to the applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator within five working days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(c) The Administrator may suspend the certificate of conformity if the manufacturer, after electing to conduct a PCA, fails to adhere to the requirements stated in § 86.1106-87(b)(3), (b)(6)(iii), (c)(2), or (c)(5)(iii).

(d) The Administrator may suspend the qualified certificate of conformity issued under the conditions specified in § 86.1106-87 if the manufacturer fails to adhere to the requirements stated in § 86.1106-87(a)(3), (a)(4)(iii), (d)(2)(iii), or (d)(3).

(e) The Administrator may suspend the certificate of conformity or the qualified certificate of conformity if the compliance level as determined in § 86.1112-87(a) is in excess of the upper limit.

(f) The Administrator may void the certificate of conformity if the compliance level as determined in § 86.1112-87(a) is in excess of the upper limit and the manufacturer fails to recall any engines or vehicles introduced into commerce pursuant to § 86.1106-87(a)(4)(ii), (b)(6)(ii), (c)(5)(ii) or (d)(2)(ii).

(g) The Administrator may void the certificate of conformity for those engines or vehicles for which the manufacturer fails to meet the requirements of § 86.1106-87(a)(4)(i), (b)(6)(i), (c)(5)(i), or (d)(2)(i).

(h) The Administrator shall notify the manufacturer in writing of any suspension or voiding of a certificate of conformity in whole or in part, except as provided for in paragraph (a) of this section.

(i) A certificate of conformity suspended or voided under paragaphs (c), (d), (e), (f) or (g) of this section may be reinstated after a written request by the manufacturer and under such terms and conditions as the Administrator may require and after the manufacturer demonstrates compliance with applicable requirements.

(j) After the Administrator suspends or voids a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend or void a certificate of conformity under § 86.087-30(e), and prior to the commencement of a hearing, if any, under § 86.1115-87, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

**§ 86.1115-87 Hearing procedures for nonconformance determinations and penalties.**

(a) *Applicability.* The procedures prescribed by this section shall apply whenever a manufacturer requests a hearing pursuant to § 86.087-30(e)(6)(i), § 86.087-30(e)(7), or § 86.1113-87(f).

(b) *Definitions.* The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Manufacturer" means a manufacturer contesting a compliance level or penalty determination sent to the manufacturer.

(3) "Party" means the Agency and the manufacturer.

(4) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(5) "Judicial Officer" shall mean an officer or employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to this section who shall meet the qualifications and perform functions as follows:

(i) *Officer.* There may be designated for purposes of this section one or more Judicial Officers. As work requires, there may be a Judicial Officer designated to act for the purposes of a particular case.

(ii) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such Judicial Officer shall not be employed by the Office of Air and Radiation or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart.

(iii) *Functions.* The Administrator may consult with a Judicial Officer or delegate all or part of his authority to act in a given case under this section to a Judicial Officer, *provided* that this delegation shall not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) *Request for public hearing.* (1) A manufacturer may request a hearing pursuant to § 86.1113-87(f) if it disagrees with the Administrator's determination of compliance level or penalty calculation or both, or pursuant to §§ 86.085-30(e)(6)(i) or 86.085-30(e)(7) if it disagrees with the Administrator's proposed suspension or voiding of a certificate of conformity. Requests for such a hearing shall be filed no later than 15 days:

(i) After receipt of the Administrator's notification of NCP, if the compliance level is in the allowable range of nonconformity, or

(ii) After completion of the Production Compliance Audit, if the compliance level exceeds the upper limit, or

(iii) After receipt of the Administrator's notification of a proposed suspension or voiding of a certificate of conformity if the hearing is requested pursuant to §§ 86.085-30(e)(6)(i) or 86.085-30(e)(7), unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or penalty calculation.

(2) The request for a public hearing shall contain:

(i) A statement as to which vehicle or engine subclasses or configurations are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing for each vehicle or engine subclass or configuration for which the manufacturer has requested the hearing. Provided, however, that in the case of a hearing requested under § 86.1113-87(f), the hearing shall be restricted to the following issues:

(A) Whether the compliance level was determined in accordance with the procedures in § 86.1112-87(a); or

(B) Whether the penalty was calculated in accordance with the procedures in § 86.1113-87(a).

(iii) A statement specifying reasons why the manufacturer believes it will prevail on the merits on each of the issues so raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(d) *Summary decision.* (1) In the case of a hearing requested under § 86.1113-87(f) when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.1115-87(c)(2)(ii), the Administrator will enter an order denying the request for a hearing, and reaffirming the original compliance level determination or penalty calculation.

(2) Any order issued under paragraph (d)(1) of this section shall have the force and effect of a final decision of the Administrator, as issued pursuant to paragraph (v)(4) of this section.

(3) If the Administrator determines that a genuine and substantial question of fact does exist with respect to any of the issues referred to in paragraph (d)(1) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this section.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony shall be presented in written form. Copies of written testimony shall be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service shall be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Manufacturers Operations Division shall be sent by registered mail to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency (EN-340F), 401 M Street, S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such a period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(g)(1) *Consolidation.* The Administrator of the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(2) If a vehicle or engine is determined to be in nonconformity during certification testing under Subpart A of this part, then the manufacturer may wait to challenge the determination until after production compliance auditing and calculation of his penalty and may consolidate challenges to the determination of nonconformity and the compliance level determination or the penalty calculation, without losing any rights he would otherwise have had.

(3) If a vehicle or engine is determined to be in nonconformity during selective enforcement auditing under Subpart K of this part, then the manufacturer must wait to challenge the determination until after the compliance level determination and the penalty calculation, and must consolidate challenges to the determination of nonconformity and the compliance level determination or the calculation of the penalty.

(h) *Notice of public hearings.* (1) Notice of public hearing under this section shall be given by publication in the **Federal Register** and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible, hearings under this section shall be scheduled to commence within 30 days of receipt of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall have the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C. §§ 554, 556 and 557 and to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rules and with the Administrative Procedure Act necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing;

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties of the time and location of such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(l) *Primary discovery (exchange of witness lists and documents).* (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may upon motion by a party or other person, and for good cause shown, by order

(i) Restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and

(ii) Prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of this expected testimony, to prepare for the presentation of this case.

(m) *Other discovery.* (1) Except as provided by paragraph (m)(1) of this section, further discovery under this paragraph shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a party or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof (other than emission data), would result in methods or processes entitled to protection as trade secrets of the person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing, *provided* that the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing. Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the government, disclosure to a party or his counsel shall be conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, representatives of the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issued pursuant to paragraph (n)(1) of this section, that desires to make use of any in camera documents or testimony in the presentation of his case shall apply to the Presiding Officer by motion for permission to do so, and shall state the justification for the motion. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties as far as is practicable, and preventing unnecessary disclosure of such information and testimony concerning such information.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony. This shall not preclude references in such proposed findings, briefs, or other papers marked "confidential," which shall become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefore, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within such time as may be fixed by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The motion shall, if requested by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Administrator of the judicial officer, as appropriate, shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer, the Administrator or the judicial officer, as appropriate, deems it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevent parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Record.* (1) Hearings shall be stenographically reported and transcribed and the original transcripts shall be part of the record. Copies of the records shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person who wants a copy of the record of the hearing or any part thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(r) *Proposed findings, conclusions.* (1) Within 30 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with reasons therefore and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(2) The record shall show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the

proceeding otherwise informs the parties of the action taken by him.

(s) *Decision of the Presiding Officer.* (1) Unless extended by the Administrator, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 30 days after the period for filing proposed findings has expired, as provided for in paragraph (r) of this section.

(2) The Presiding Officer's decision shall become the decision of the Administrator (i) 10 days after issuance thereof, if no notice of intention to appeal as described in paragraph (t) of this section is filed, unless in the interim the Administrator shall have taken action to review or stay the effective date of the decision; or (ii) 5 days after expiration of the period allowed by paragraph (t)(1) of this section for perfection of an appeal, if a notice of intention to appeal is filed but the appeal is not perfected, unless within that 5 day period the Administrator shall have taken action to review or stay the effective date of the decision.

(3) The Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Administrator, *provided* that within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 20 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within the same time limits as the appellant's brief.

(3) Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be appealed;

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and legal or other material relied upon; and

(iv) A proposed order for the Administrator's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 15 pages shall be filed without leave of the Administrator.

(5) Oral argument will be allowed only in the discretion of the Administrator.

(u) *Review of the Presiding Officer's decision in absence of appeal.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (t) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Administrator.

(2) The Administrator, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (t)(1) of this section, may, on his own motion, within 14 days after notice from the Hearing Clerk, review the decision of the Presiding Officer. Notice of the intention of the Administrator to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provisions for filing of briefs.

(v) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had presided at the hearing.

(2) In rendering his decision, the Administrator shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in his decision a statement of the reasons or bases for this action.

(3) In those cases where the Administrator believes that he should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completed disposition of a case shall be a final decision of the Administrator.

(w) *Reconsideration.* Any party may file with the Administrator a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. This petition must be filed within 20 days of the issuance of the Administrator's decision, and must be confined to new questions raised by the decision or final order and which the petitioner had no opportunity to argue before the Presiding Officer or the Administrator, unless otherwise specified by the Administrator. Subsequent to the expiration of the period for petitioning for reconsideration, the Administrator may, in his descretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or the penalty calculation, even though such issues may have been raised in the previous proceeding. Any party desiring to oppose such a petition, shall file an answer thereto within 10 days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Administrator.

(x) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically, failure to obey a procedural order of the Presiding Officer.

(2) If under this paragraph an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer, as provided in paragraph (s) of this section.

(3) If under this paragraph, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material

facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(y) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided by paragraph (t) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Administrator on his own motion as provided for by paragraph (u) of this section, the Administrator does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (t) of this section, or if, in the absence of such appeal the Administrator moves to review the decision of the Presiding Officer pursuant to paragraph (u) of this section, the hearing will be deemed to have ended upon issuance of a final decision by the Administrator.

(z) *Judicial review.* (1) The Administrator hereby designates the General Counsel, Environmental Protection Agency, as the officer upon whom copies of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

11. The table of contents of Part 86 is amended by adding the following appendix:

* * * * *

Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks.

12. Part 86 is amended by adding Appendix XII as follows:

## Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

TABLE 1.—COMPLIANCE LEVEL DETERMINATION USING THE PRIMARY PCA SAMPLING PLAN

| | Compliance level [2] |
|---|---|
| PCA test sample size.[1] | |
| 24 | 15 |
| 25 | 15 |
| 26 | 16 |
| 27 | 17 |
| 28 | 17 |
| 29 | 18 |
| 30 | 18 |
| 31 | 19 |
| 32 | 20 |
| 33 | 20 |
| 34 | 21 |
| 35 | 21 |
| 36 | 22 |
| 37 | 23 |
| 38 | 23 |
| 39 | 24 |
| 40 | 24 |
| 41 | 25 |
| 42 | 26 |
| 43 | 26 |
| 44 | 27 |
| 45 | 27 |
| 46 | 28 |
| 47 | 29 |
| 48 | 29 |
| 49 | 30 |
| 50 | 30 |
| 51 | 31 |
| 52 | 32 |
| 53 | 32 |
| 54 | 33 |
| 55 | 33 |
| 56 | 34 |
| 57 | 35 |
| 58 | 35 |
| 59 | 36 |
| 60 | 36 |

[1] Including the number of SEA tests if applicable.
[2] Is the test result of the sequence number: (The lowest test result is sequence No. 1).

TABLE 2.—VALUES OF K FOR THE REDUCED FIXED PCA SAMPLING PLAN

| | Value of K |
|---|---|
| Sample size: | |
| 3 | 1.602 |
| 4 | 1.114 |
| 5 | 0.895 |
| 6 | 0.764 |
| 7 | 0.674 |
| 8 | 0.608 |
| 9 | 0.555 |
| 10 | 0.513 |
| 11 | 0.478 |
| 12 | 0.448 |
| 13 | 0.422 |
| 14 | 0.399 |
| 15 | 0.379 |
| 16 | 0.360 |
| 17 | 0.343 |
| 18 | 0.328 |
| 19 | 0.314 |
| 20 | 0.301 |
| 21 | 0.289 |
| 22 | 0.277 |
| 23 | 0.266 |

TABLE 3.—VALUES OF K FOR THE REDUCED SEQUENTIAL PCA SAMPLING PLAN

| | Value of K |
|---|---|
| Sample size: | |
| 4 | 1.671 |
| 8 | 0.912 |
| 12 | 0.672 |
| 16 | 0.540 |
| 20 | 0.451 |

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