

§ 510.34 [Removed and Reserved]

2. Section 510.34 is removed and reserved.

§ 510.36 [Removed and Reserved]

3. Section 510.36 is removed and reserved.

Dated: October 21, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88-25109 Filed 10-28-88; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[T.D. 8233]

Income Taxes; Investment Tax Credit for Qualified Rehabilitation Expenditures; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8233, which was published in the *Federal Register* for Tuesday, October 11, 1988 (53 FR 39589). The final regulations relate to an investment tax credit for qualified rehabilitation expenditures to qualified rehabilitated buildings.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, 202-566-3822 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The final regulations that are the subject of these corrections provide guidance to taxpayers in the application of sections 46, 48 and 191 of the Internal Revenue Code of 1986. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986.

Need For Correction

As published, T.D. 8233 contains a typographical error and an omission.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8233), which was the subject of FR Doc. 88-23219, is corrected as follows:

§ 1.148-12 [Corrected]

Paragraph 1. In § 1.148-12 (c)(3)(ii)(A)(2), page 39599, column 1, eighteenth line, the language "used (or

placed in Service) prior to the" is corrected to read "used (or placed in service) prior to the".

Paragraph 2. In § 1.148-12(c)(8)(i), page 39600, column 2, ninth line, the language "of 168(g) applies to such expenditure by" is corrected to read "of section 168(g) applies to such expenditure by".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-25112 Filed 10-28-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925****Approval of Amendments to the Missouri Permanent Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Missouri as modifications to the State's permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments incorporate changes to the Missouri regulations in the areas of prime farmland, coal exploration, small operator's assistance program (SOAP), two-acre exemption, inspection and enforcement, experimental practices, definitions, alternative bonding system, revegetation success, permit acreage fees, use of explosives, general revenue fund prohibition, and State law stringency. These changes are being made to maintain the State's consistency with SMCRA and the Federal regulations, to clarify requirements, and to incorporate additional flexibility provided by the revised Federal rules.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64108; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:**I. Background**

The Secretary of the Interior approved the Missouri program on November 21,

1980 (45 FR 77017). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980, *Federal Register* (45 FR 77017). Subsequent actions concerning proposed amendments are codified at 30 CFR 925.15 and 925.16.

II. Submission of Amendments

On December 14, 1987, (Administrative Record No. MO-353) and on December 18, 1987, (Administrative Record No. MO-354) the State of Missouri submitted amendments to its approved regulatory program. The proposed regulations amend Chapters 4, 6, 7, and 8 of Division 40—Land Reclamation Commission (LRC), Title 10—Department of Natural Resources, of the Missouri Code of State Regulations (CSR). The amendments also revise sections 444.730, 444.800, 444.805, and 444.950 of the Revised Statutes of Missouri (RSMo).

These revisions are proposed by Missouri in response to: (1) A June 11, 1986, letter (Administrative Record No. MO-295) under 30 CFR Part 732 from OSMRE, concerning regulatory reform; (2) a June 9, 1987 letter (Administrative Record No. MO-364) under 30 CFR Part 732 from OSMRE concerning the protection of historic, cultural, and archaeological resources during coal exploration in accordance with the revised Federal regulations promulgated February 10, 1987, (52 FR 4244); (3) Public Law 100-34 and the OSMRE notice of suspension that repealed the two-acre exemption published in the June 4, 1987, *Federal Register* (52 FR 21226); (4) a January 30, 1986, letter from OSMRE (Administrative Record No. MO-351) under 30 CFR Part 732 concerning the adequacy of the Missouri alternative bonding system; and (5) a required program amendment at 30 CFR 925.16(j) concerning revegetation success during the initial program. Missouri has also chosen to revise some of its statutes and regulations to increase flexibility and clarify existing regulations.

The amendment revises: 10 CSR 40-2.090(6)(B), Revegetation Requirements; 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E), Surface and Underground Requirements for the Use of Explosives; 10 CSR 40-4.010, Coal Exploration Requirements; 10 CSR 40-4.030, Operations on Prime Farmland; 10 CSR 40-6.010(6)(A), General Requirements for Permits, Permit Applications, and

Coal Exploration; 10 CSR 40-6.020, General Requirements for Coal Exploration, Permits; 10 CSR 40-6.040(16) and 10 CSR 40-6.110(16), Surface and Underground Prime Farmland Investigation; 10 CSR 40-6.060(1) (E), (G), (J), and (K), Experimental Practices; 10 CSR 40-7.021(4)(B), Duration and Release of Reclamation Liability; 10 CSR 40-8.010(1)(A), Definitions; 10 CSR 40-8.030(3)(B), Inspection and Enforcement; 10 CSR 40-8.050, Small Operators Assistance; 10 CSR 40-8.070(2), Applicability; and §§ 444.730, 444.800, 444.805, and 444.950 RSMo 1986 of Missouri statute related to mining.

The Director announced receipt of the proposed amendment in the February 26, 1988, *Federal Register* (53 FR 5804) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No public comments were received by March 28, 1988, the close of the comment period. The public hearing, scheduled for March 22, 1988, was not held because no one requested an opportunity to testify.

Following a thorough review of the Missouri amendments, OSMRE notified that State on April 20, 1988 (Administrative Record No. MO-380), of its concerns regarding several provisions in the areas of applicability, prime farmland, and definitions. These concerns identified changes that appeared to be less effective than the Federal regulations. On May 10, 1988 (Administrative Record No. MO-377), Missouri informed OSMRE that it plans to address these concerns during future rulemakings.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the Missouri program amendments submitted on December 14 and 18, 1987, meet the requirements of SMCRA and 30 CFR Chapter VII, except as discussed below. Only those provisions of particular interest are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and his ongoing oversight of the Missouri program. Provisions that are not discussed either contain language similar to the corresponding Federal regulations, lack a Federal counterpart, or involve provisions that add specificity, and that do not adversely affect other aspects of the program.

1. Operations on Prime Farmlands

a. 10 CSR 40-4.030(4)(A): Applicability

The proposed amendment at 10 CSR 40-4.030(4)(A) would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads of surface mining activities. The Federal regulation excluding these activities, 30 CFR 823.11(a), was remanded by the U.S. District Court for the District of Columbia decisions *IN RE: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (PSMRL II).

The Director finds the exemption from prime farmland performance standards to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40-4.030(4)(A). Missouri will be required to amend this regulation to comply with the court's ruling.

b. 10 CSR 40-4.030(b)(B): Water Bodies on Prime Farmland

The proposed amendment at 10 CSR 40-4.030(4)(B) would allow Missouri to approve land use changes from cropland that is prime farmland to water bodies. The District Court (PSMRL II) held that the Federal regulations at 30 CFR 823.11(b) provided an impermissibly broad variance from the post-mining use of cropland qualifying as prime farmland. This type of land use change is not allowable.

The Director finds the land use change from cropland designated as prime farmland to water bodies to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40-4.030(4)(B). Missouri will be required to amend this regulation to comply with the court's ruling.

c. 10 CSR 40-4.030(7)(B)6: Productivity on Prime Farmland

The proposed amendment at 10 CSR 40-4.030(7)(B)6 outlines the selection process for determining those crops to be used for proof of productivity on prime farmland. The crops must be commonly grown in the county of the permit area. The crop planted on the most acreage within the county must be utilized for at least one of the three years necessary to prove productivity. An exception to this is hay crops. If a hay crop is planted to the most acreage in a county, then the crop with the second largest acreage must be utilized for proof of productivity in at least one of the three years during crop measurement. The amendment does not, however, require that the row crop with greatest rooting depth be chosen as one

of the reference crops as required at 30 CFR 823.15(b)(6).

The Director finds the method of reference crop selection at 10 CSR 40-4.030(7)(B)6 to be less stringent than SMCRA and less effective than the Federal regulations. Missouri will be required to amend this regulation to be no less effective than 30 CFR 823.15(b)(6).

2. 10 CSR 40-8.010(1)(A)18: Definitions

The proposed amendment at 10 CSR 40-8.010(1)(A)18 includes as part of the definition of "coal processing plant" and "coal preparation plant" the requirement that such a facility separate coal from its impurities. This definition is impermissibly narrow as compared to the revised rule promulgated by OSMRE on May 11, 1987 (52 FR 17724). As defined at 30 CFR 701.5, a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation is regulated, even if it does not separate coal from its impurities.

The Director finds the definition of "coal processing plant" and "coal preparation plant" to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40-8.010(1)(A)18. Missouri will be required to amend this regulation to be no less effective than the definition of "coal preparation plant" at 30 CFR 701.5.

3. 10 CSR 40-2.090(6)(B): Revegetation Requirements

Missouri amends 10 CSR 40-2.090(6)(B) to add a requirement that the revegetation success standard be met for 2 growing seasons in order to respond to a required program amendment at 30 CFR 925.16(j) concerning 30 CFR 715.20(f).

The amended revegetation success standard makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment of 10 CSR 40-2.090(6)(B) to be no less stringent than SMCRA and no less effective than the Federal regulations.

4. 10 CSR 40-6.020(3) (B)8 and (D)2: Coal Exploration

Missouri amends 10 CSR 40-6.020(3) (B)8 and (D)2 to require that applications include cultural, historic, and archaeological resources within the proposed exploration area as required in a June 9, 1987, letter (Administrative Record No. MO-364) under 30 CFR Part 732 from OSMRE concerning 30 CFR 772.12(b)(8).

The application requirement amendments make the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment of 10 CSR 40-6.020(3) (B)8 and (D)2 to be no less stringent than SMCRA and no less effective than the Federal regulations.

5. 10 CSR 40-8.070(2)(B): Two-Acre Exemption Repeal

Missouri amends 10 CSR 40-8.070(2)(B) by removing the two-acre exemption from surface coal mine regulation. On May 7, 1987, the President signed Pub. L. 100-34 repealing the two-acre exemption in all Federal and State programs. The requirements of SMCRA now apply to all surface coal mining operations regardless of size, unless exempt under some other provision. On June 4, 1987 (52 FR 21228), OSMRE published a notice of suspension for 30 CFR 700.11(b), making the Federal regulation consistent with SMCRA.

The exemption removal amendment makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment to 10 CSR 40-8.070(2)(B) to be no less stringent than SMCRA and no less effective than the Federal regulations.

6. 10 CSR 40-6.020 (7) and (8): Coal Exploration Bonding

Missouri amends 10 CSR 40-6.020 (7) and (8) to require a reclamation bond for all coal exploration permits and to identify conditions for their release. A bond of \$5,000 per acre is required when 250 tons of coal or less will be removed. A bond calculated at a rate sufficient to complete reclamation as performed by the commission is required where more than 250 tons of coal will be removed. The bonding requirements of 30 CFR Part 800 apply only to surface mining and reclamation operations; thus, OSMRE does not have a comparable regulation to Missouri's requirement for coal exploration bonding.

The Director finds that the amendment to 10 CSR 40-6.020 (7) and (8) is not inconsistent with SMCRA and the Federal regulations because it has adopted requirements that are more stringent than the requirements of 30 CFR Part 800.

7. Section 444.950: Bonding

Missouri amends its statutes at § 444.950 RSMo 1986 by requiring a bond of no more than \$10,000 per acre for the coal preparation area. Missouri has an alternative bonding system that divides the reclamation liability between the operator reclamation bond for Phase I reclamation and the reclamation trust

fund for Phase II and Phase III. This amendment would increase the operator bond on coal preparation areas for Phase I reclamation from \$2,500 per acre to \$10,000 per acre. The amendment is a partial response to a January 30, 1986, letter (Administrative Record No. MO-351) under 30 CFR Part 732 concerning 30 CFR 800.11(e) (1) and (2). This amendment is one of several measures yet to come that are designed to address the concerns of that letter.

The Director finds, based on the above discussion, that the above amendment, as proposed by Missouri, is a significant improvement to the Missouri alternative bonding system. The amendment, as proposed, is an adequate partial response to OSMRE's January 30, 1986, letter pursuant to 30 CFR 732.17(d) and is consistent with SMCRA and the Federal regulations because it provides a substantial economic incentive for the permittee to comply with the reclamation provisions.

8. Section 444.805: Definitions

Missouri amends its statutes at § 444.805 RSMo 1986 to add definitions of "coal preparation area" and "coal preparation area reclamation" to be consistent with language adopted under § 444.950 RSMo 1986 concerning the bonding and reclamation of coal preparation areas. OSMRE does not have parallel definitions of these terms. The definitions adopted by Missouri are consistent with related terms defined at 30 CFR 701.5 concerning coal preparation and disturbed areas and add greater detail for determining the area to be bonded and reclaimed specifically related to coal preparation.

The Director finds that the amendment at § 444.805 RSMo 1986 is not inconsistent with SMCRA and the Federal regulations.

9. 10 CSR 40-6.010(6)(A): Permit Fee

Missouri amends 10 CSR 40-6.010(6)(A) to increase the fee charged for new surface coal mine permits from \$35 per acre to \$100 per acre. 30 CFR 777.17 requires each application for a surface coal mining and reclamation permit to be accompanied by a fee as determined by the regulatory authority. Such fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. Missouri has provided documentation in a July 25, 1988, letter to OSMRE (Administrative Record No. MO-390) that the change in fees will not generate revenues in excess of the cost of reviewing, administering, and enforcing the permit.

The amended permit fee fulfills the requirements of the Federal regulations

at 30 CFR 777.17; therefore, the Director finds the amendment of 10 CSR 40-6.010(6)(A) to be no less stringent than SMCRA and no less effective than the Federal regulations.

10. 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E): Use of Explosives

Missouri amends 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E), concerning blasting buffer zones, by deleting them. The proposed amendment will eliminate these zones and rely on the performance standards of 10 CSR 40-3.050(5) to restrict the effect of explosives for the protection of the public and property. The Federal regulations at 30 CFR 816.61 through 816.68 and 817.61 through 817.68 do not establish blasting buffer zones and also rely on the same performance standards for the protection of property and the public.

The deletion of the blasting buffer zone makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds that the amendment to 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E) to be no less stringent than SMCRA and no less effective than the Federal regulations.

11. Section 444.730: Program Funding

Missouri amends its statutes by deleting subsection 4 of Section 444.730 RSMo 1986 thereby removing the State prohibition on appropriating or expending general revenue for the administration or enforcement of the Missouri program. Section 503(a) of SMCRA and 30 CFR 732.15(d) require that a State demonstrate that it has the ability to carry out the requirements of SMCRA " * * * with sufficient funding to enable the State to regulate surface coal mining and reclamation operations * * * ". The proposed amendment will neither increase or decrease State funding, it will only allow the program one more potential source of funds.

The Director finds that the amendment at section 444.730 RSMo 1986 is not inconsistent with the requirements of SMCRA and the Federal regulations.

12. Section 444.800: State Law Stringency

Missouri amends its statutes at subsection 4 of section 444.800 RSMo 1986 to direct the Land Reclamation Commission in its adoption of rules and regulations to insure that such rules and regulations shall be no more stringent than the comparable Federal regulations, unless it can be affirmatively shown that the greater

stringency is essential to the proper administration and enforcement of this law. The Federal regulations at 30 CFR 730.11 require that State laws and regulations be "in accordance with" or "consistent with" the Federal law and regulations. The Federal regulations at 30 CFR 700.3(c) also allow for a State's law or regulations to provide more stringent regulations or controls than those provided by SMCRA. The proposed amendment will not allow the State to reduce the effectiveness of its program below the limits of SMCRA, but will allow the State to exceed the limits of SMCRA, if the appropriate conditions are met.

The Director finds that the amendment at section 444.800 RSMo 1986 is not inconsistent with SMCRA and the Federal regulations.

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri program. The U.S. Environmental Protection Agency (EPA) concurred that the amendments to the Missouri program demonstrate the legal authority, administrative capability, and technical conformity to SMCRA regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). None of the other agencies notified offered any comment.

In accordance with 30 CFR 732.17(h)(4), comments were also solicited from the State Historic Preservation Officer and the Advisory Council on Historic Preservation; however, no substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Missouri on December 14 and 18, 1987, with the exception of those provisions concerning regulations determined to be inconsistent with SMCRA, the Federal regulations, or court decisions. To the extent required by 30 CFR 732.17(11)(ii), the EPA has concurred in this approval (Administrative Record No. MO-370).

The Federal regulations at 30 CFR Part 925 codifying decisions concerning

the Missouri program are amended to implement this decision. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSMRE's review and approval with the exception of typographical errors. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is disapproving the following provisions of the proposed amendments: (1) As discussed in the finding 1a, the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads associated with surface coal mining activities in 10 CSR 40-4.030(4)(A); (2) as discussed in finding 1b, the exemption of water bodies from prime farmland performance standards where the original land use was prime farmland in 10 CSR 40-4.030(4)(B); and (3) as discussed in finding 2, the definitions of "coal processing plant" and "coal preparation plant" insofar as they exclude certain facilities that physically process coal in 10 CSR 40-8.010(1)(A)18.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Missouri program, the Director will recognize only statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

1. *National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 21, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation for Part 925 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.12 is added to read as follows:

§ 925.12 State program provisions and amendments disapproved.

The following provisions of the Missouri surface coal mining regulations as submitted on December 14 and 18, 1987, are hereby disapproved:

(a) 10 CSR 40-4.030(4)(A) insofar as it would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads associated with surface coal mining activities.

(b) 10 CSR 40-4.030(4)(B) insofar as it would exempt from prime farmland performance standards water bodies as a postmining land use.

(c) 10 CSR 40-8.010(1)(A)18 the definitions of "coal processing plant" and "coal preparation plant" insofar as they exempt from regulation certain facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, if they do not separate coal from its impurities.

3. Section 925.15 paragraph (g) is added to read as follows:

§ 925.15 Approval of regulatory program amendments.

(g) The following amendments as submitted to OSMRE on December 14 and 18, 1987, are approved effective October 31, 1988.

(1) Revisions to the Missouri Code of State Regulations at 10 CSR 40-4.030(4) (C), (5), (6), and (7)(A), (B)(1), (2), (3), (4), (5), (7), and (8), Operations on Prime Farmland; 10 CSR 40-6.040(16), Prime Farmland Investigation; 10 CSR 40-6.060(4)(B), (C), and (D), Requirements for Permits on Prime Farmland; 10 CSR 40-6.110(16), Prime Farmland Investigation; 10 CSR 40-4.010, Coal Exploration Requirements; 10 CSR 40-6.020, General Requirements for Coal Exploration Permits; 10 CSR 40-8.050, Small Operator's Assistance; 10 CSR 40-8.070(2), Applicability and General Requirements; 10 CSR 8.030(3)(B), Availability of records; 10 CSR 40-7.021(4)(B), Inspection and Enforcement; 10 CSR 40-6.060(1)(E), (G), (J), and (K), Experimental Practices; 10 CSR 40-8.010(1)(A)5, 15, 16, 17, 19, 20, 25, 47, 48, and 92, Definitions; 10 CSR 40-2.090(6)(B), Revegetation Requirements; 10 CSR 40-6.010(6)(A), Permit fees; and 10 CSR 40-3.050(1)(E) and 10 CSR 3.210(1)(E), Blasting buffer zone.

(2) Revisions of the Revised Statutes of Missouri at sections 444.730, 444.800, 444.805 and 444.950 related to mining.

4. Section 925.16 is amended by removing and reserving paragraph (j) and adding paragraph (m) to read as follows:

§ 925.16 Required program amendments.

(j) [Reserved]

(m) By November 15, 1988, amend its program at:

(1) 10 CSR 40-4.030(4)(A) to remove the exemption from prime farmland performance standards afforded to coal preparation plants, support facilities, and roads associated with surface mining activities to be no less effective than 30 CFR 823.11(a).

(2) 10 CSR 40-4.030(4)(B) to remove the exemption from prime farmland performance standards provided to

water bodies as a postmining land use to be no less effective than 30 CFR 823.11(b).

(3) 10 CSR 40-4.030(7)(B)6 to add a requirement that the row crop with the greatest rooting depth be chosen as one of the reference crops to be no less effective than 30 CFR 823.15(b)(6).

(4) 10 CSR 40-8.010(1)(A)18 to revise its definitions of "coal processing plant" and "coal preparation plant" to include all facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, even if it is not separating coal from its impurities, to be no less effective than the definitions found at 30 CFR 701.5.

[FR Doc. 88-24936 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3333-8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Revision of Particulate Emission Standards for Certain 1987 and Later Model Year Light-Duty Diesel Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that establishes the following particulate standards under the Clean Air Act for light-duty diesel trucks with a loaded vehicle weight of 3,751 pounds or above (LDDT2): 0.50 gram per mile for the 1987 model year; 0.45 gram per mile for the 1988 through 1990 model years; and 0.13 gram per mile for the 1991 and later model years. The 1987-90 model year standards are applicable at low altitudes only; the 1991 and later model year standard is an all-altitude standard. Particulate standards for light-duty diesel trucks with a loaded vehicle weight of 3,750 pounds or below (LDDT1) will remain unchanged. Particulate emissions averaging will not be available for LDDT2s for the 1987 through 1990 model years, although it will continue to be available for LDDT1s and diesel passenger vehicles. Beginning in 1991, particulate emissions averaging between different LDDT2 engine families within a manufacturer will be allowed.

Nonconformance penalties will also be available for the heavier portion of the 1991 and later model year LDDT2s which may fail to comply with the 0.13

gram per mile particulate emission standard. The actual rates for the NCP's made available are not included in this final rule. The rates will be established in a separate rulemaking proceeding.

The Agency is promulgating these regulations in response to a petition from General Motors Corporation that outlines a plan to develop control technology which could substantially reduce light-duty diesel truck particulate emissions from current control levels.

EFFECTIVE DATE: November 30, 1988.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A-86-20 at the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, and are available for review between the hours of 8:00 a.m. and 3:00 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. David Robertson, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382-2525.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations previously promulgated under the Clean Air Act required that particulate emissions from light-duty diesel trucks (LDDTs) be reduced from 0.60 gram per mile (g/mi) to 0.26 g/mi beginning with the 1987 model year. 49 FR 3010 (January 24, 1984), *codified at* 40 CFR 86.087-9 (1986). However, EPA regulations permit manufacturers unable to meet the 0.26 g/mi standard to sell their LDDTs in excess of 6,000 pounds gross vehicle weight rating (GVWR) if they pay nonconformance penalties (NCPs). (The Clean Air Act does not make NCPs available for vehicles weighing less than 6,000 pounds GVWR.) EPA made NCPs available for the 0.26 g/mi standard upon finding that the new standard is significantly more difficult to meet than the 0.60 g/mi standard, requires substantial work to meet, and is likely to create a manufacturer which is a technological laggard. 50 FR 53454 (December 31, 1985).

General Motors Corporation (GM) has submitted to the Administrator a petition requesting that the 0.26 g/mi particulate standard be modified for those LDDTs with a loaded vehicle weight (LVW) of 3,751 pounds or

greater, otherwise known as LDDT2s.¹ (See Petition of December 19, 1986, Docket No. A-86-20, Document No. II-D-2, revising April 17, 1986 version.) GM believes that the 0.26 g/mi standard is not technologically feasible by model year 1987 for its 6.2 liter (6.2L) diesel engine family. According to confidential sales estimates submitted by manufacturers to EPA's Certification Division, the 6.2L engine family is the only full-size, large displacement engine family in the LDDT2 class to be sold in model years 1987 and 1988.² GM stated that the 6.2L LDDT could most likely comply with the 0.26 g/mi standard by the 1989 model year, largely through refinement of already existing technology, e.g., electronically controlled exhaust gas recirculation, catalytic converters, and electronically controlled fuel injection.

GM requested that for LDDT2s, the particulate standard be relaxed to 0.50 g/mi for 1987 and 0.45 g/mi for 1988 through 1990 and then tightened to 0.13 g/mi beginning with the 1991 model year. In effect, GM's proposal is to relax the standard for model years 1987 through 1990 to permit manufacturers to focus their efforts on development of advanced particulate control technology which would, in turn, allow compliance with a 0.13 g/mi particulate emission standard by 1991. In exchange for the near-term relaxation of the 0.26 g/mi standard, GM claimed that there would be a significant long-term environmental benefit from the development of more effective particulate control technology applicable not only to LDDT2s, but potentially to other diesel vehicle classes as well.

As part of its petition, GM set forth a proposed research and development plan on which it based its projection of the probable technological feasibility of a 0.13 g/mi standard by model year 1991. The plan pursues an advanced particulate control technology with a particulate trap-oxidizer system ("trap") as its primary objective. Traps filter particulate matter from diesel exhaust, then burn off the trapped matter. Application of traps to LDDT2s presents several technological issues, such as durability during the longer useful life of light-duty trucks, that in GM's opinion have yet to be resolved. GM's proposed plan targets these issues for resolution

by 1991, even in the event GM discontinues production of its 6.2L LDDT. GM's petition also asked EPA to make NCPs available for the proposed 1991 standard.

The Agency has carefully considered GM's petition and the technology development program it has proposed. Specifically, the research and development plan outlined by GM suggests that a 0.13 g/mi standard is attainable by model year 1991. EPA believes that the 0.13 g/mi standard could create significant environmental benefits. The standard will likely halve particulate emissions from LDDT2s compared to the 0.26 g/mi standard previously in place for the same time frame. Although the plan outlined in GM's petition would relax the particulate standards for 4 model years, EPA analysis shows that GM's suggested schedule of standards could realize a net LDDT2 emissions reduction over the 1987 and later model year 0.26 g/mi standard as early as 1995, assuming a moderate increase in LDT sales, plus a moderate increase in diesel sales penetration of that LDT market. (See Particulate Emissions Projection of the GM 6.2L Diesel Engine, Docket No. A-86-20, Document No. IIA-B-1 hereinafter "No. IIA-B-1.") Given the health and environmental hazards associated with particulate matter (see section IV, *infra*), a net reduction in LDDT2 particulate emissions would clearly be beneficial.

A more significant potential benefit of GM's suggested technology forcing strategy is that it could reduce particulate emissions from classes of vehicles in addition to LDDT2s. LDDT2s meeting a 0.13 g/mi standard will be controlled to a level substantially below the concurrent standards for lighter LDDTs and diesel passenger vehicles. Even though LDDT2s do not emit a large proportion of total diesel motor vehicle particulate emissions, EPA believes that if particulate trap technology capable of meeting a 0.13 g/mi standard is developed for LDDT2s, it could be transferable to lighter vehicle classes. Further, LDDT2s trap technology might also be transferable to heavier vehicles, a possibility GM notes in its petition.

Considering GM's showing of the likely feasibility of a 0.13 g/mi standard, and EPA's analysis of the environmental benefits that the 0.13 g/mi standard would likely yield, EPA decided to propose the schedule of revised standards outlined in GM's petition in a Notice of Proposed Rulemaking (52 FR 20175, June 4, 1987). In this NPRM the Agency also proposed to make NCPs available for 1991 and subsequent model

year LDDT2s subject to the 0.13 g/mi particulate standard. (See Section III.B., *infra*).

II. Statutory Authority

Some LDDT2s exceed 6,000 pounds GVWR, and thus qualify as heavy-duty vehicles (HDV) under section 202(b)(3)(C) of the Act, 42 U.S.C. 7521(b)(3)(C). Other LDDT2s, while exceeding 3,751 pounds LVW, do not exceed 6,000 pounds GVWR, and thus are not HDVs.

For LDDT2s which are also HDVs, section 202(a)(3)(A)(iii), 42 U.S.C. 7521(a)(3)(A)(iii), authorizes EPA to promulgate particulate emission standards.

For LDDT2s which are not HDVs, section 202(a)(1) of the Clean Air Act, 42 U.S.C. 7521(a)(1), provides that the Administrator shall "by regulation prescribe * * * standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles * * * which may reasonably be anticipated to endanger the public health or welfare * * *." Particulate matter may be regulated as a threat to the public health and welfare. *NRDC v. EPA*, 655 F.2d 318, 327 (DC Cir.), cert. denied, 454 U.S. 1017 (1981).

Section 202(a)(3)(A)(iv), 42 U.S.C. 7521(a)(3)(A)(iv), authorizes EPA to categorize heavy-duty vehicles and engines according to vehicle weight, horsepower, "or such other factors as may be appropriate." Section 202(a)(1) grants EPA broad discretion to define classes of vehicles for purposes of setting standards under that section.

Section 206(g) of the Act, 42 U.S.C. 7525(g), permits the Administrator to promulgate NCPs for nonconforming heavy-duty vehicles and engines which do not exceed an "upper limit" of emission nonconformity. Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentives for nonconforming manufacturers to achieve the emission standard; and
- Remove any competitive disadvantage to conforming manufacturers.

Finally, section 301(a) of the Act, 42 U.S.C. 7620(a), provides in part that "the Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

III. Discussion of Final Rule and Comments

This final rule adopts the NPRM provisions described above with one

¹ EPA previously distinguished between LDDT2s and the lighter LDDT1s in setting NO_x emission standards. See 50 FR 10606, 10620 (March 15, 1985).

² Only two other manufacturers are selling LDDT2s for the 1987 model year. Both of their models have smaller engines than GM's and one is significantly lighter; thus they emit less particulates. Neither of these other two are selling LDDT2s for the 1988 model year.

exception: The NCP penalty rates that were presented for LDDT2s in the 6,001 to 8,500 GVWR category in the NPRM are not being incorporated into this final rule. The actual penalty rates that will be applicable for the NCPs made available under this rulemaking will be established in a separate rulemaking proceeding. This will allow the Agency to base NCP rates on more recent information than if the penalty rates were established herein.

During the time that was available for public comment on the NPRM, eight organizations provided written comments. Of these eight, five are vehicle or engine manufacturers, one is an industry trade association, one is an emission control manufacturer, and one is an environmental organization.

a. General Issues

Several comments were received that did not directly address provisions proposed in the NPRM. Cummins Engine Company (Cummins) comments concerned the impact this rulemaking might have on an Advance Notice of Proposed Rulemaking (ANPRM) that EPA published on September 8, 1986 (51 CFR Part 32032). The ANPRM addressed the possible reclassification of Class IIB vehicles (8,501 to 10,000 lbs. GVWR) as LDTs. Cummins suggested that the LDDT2s particulate emission standards promulgated in this rulemaking should not apply to Class IIB vehicles, if the EPA concludes that these vehicles should be reclassified as LDTs.

It is beyond the scope of this rulemaking to address the applicability of the revised particulate emission standards contained herein to vehicles that are not currently categorized as LDDT2s. The appropriate forum to address Cummins' particular concern is the rulemaking process that would consider the possible reclassification of the IIB vehicles as LDTs.

The Natural Resources Defense Council (NRDC) had several comments relating to commitments GM discussed in its petition of December 19, 1986, and EPA's responsibility in assuring that these commitments are met. NRDC also commented that semi-annual meetings should occur between GM and EPA to discuss the progress of the research in developing the technology needed to meet the 0.13 gram/mile exhaust particulate standard.

In the December 19, 1986 petition GM made several commitments and statements that have provided support for this final rule. GM committed to continue with the technology development program through the 1991 model year, to accept the feasibility of the 0.13 gram/mile exhaust particulate

standard for the 1991 model year, and to provide EPA with information on the progress of the development program by scheduling annual program reviews. EPA intends to hold GM to these stated commitments. GM has already proceeded with its planned development program and has provided information regarding this program to EPA during an initial meeting between EPA and GM representatives. Similar reviews will occur annually, or more often as is warranted by the progression of the program.

In its comments, Converter Technology proposed that EPA, truck manufacturers, particulate control device manufacturers, and other interested groups commit to regular briefings about the progress and development of any new particulate control technology. EPA, as always, is willing to meet with any interested parties that may be able to provide relevant information on new emission control technologies.

b. The Standards

NRDC and Converter Technology both commented that, in their opinion, the previous 1987 LDDT2 particulate standard of 0.26 g/mi is technologically feasible. As mentioned earlier, GM stated in its petition that it does not believe the 0.26 g/mi particulate standard is feasible for GM's 6.2L LDDT in the 1987 or 1988 model years. Two other manufacturers certified LDDT2 vehicles as meeting the 0.26 g/mi standard in the 1987 model year, and one certified LDDT2 vehicles in the 1988 model year although this manufacturer does not plan to sell any 1988 model year vehicles in this vehicle class. The ability of these manufacturers to meet the 0.26 g/mi standard, however, does not necessarily establish that the standard is technologically feasible for all LDDT2s. These other manufacturers had LDDT2 vehicles with significantly smaller engine displacements than the GM 6.2L engine, and one of the vehicles was substantially lighter; thus they emit less particulate emissions.

By temporarily relaxing the 0.26 g/mi standard, EPA believes that manufacturers will be able to concentrate their resources on developing substantially improved control technologies to meet a significantly lower particulate standard in the 1991 model year. The 0.13 g/mi particulate standard established in this final rule for the 1991 model year reduces the emissions level to half of what would have been allowed by the previous standard in that same model year. Even though the interim standards (1987 to 1990) are relaxed, they are still

lower than the 1986 model year LDDT2 particulate emission standard. EPA projections indicate that cumulative LDDT2 particulate emissions resulting from these changes in the particulate emission standard will reach a break-even point in the mid-to late 1990s. In addition, EPA continues to believe that technology developed to meet the more stringent 1991 model year LDDT2 particulate emission standard may be transferable to other diesel-powered classes. This could provide EPA with an opportunity to reduce the particulate emission standards for these other classes, providing an added long-term benefit for the environment.

Converter Technology suggested some alternative provisions for this final rule that were not in the NPRM. One suggestion was to allow the use of an emission banking scheme using debits and credits to apply to the emission standards from the 1987 to possibly the 1995 model year. Manufacturers would presumably start the period with a debit in their banking accounts. If, at the end of the allowable period, manufacturers did not balance their accounts they would be required to pay NCPs on the difference. The Agency has decided to make NCPs available for manufacturers that may have trouble developing the required technology by the 1991 model year. However, EPA is presently considering the use of "banking and trading" in a separate rulemaking. See 51 FR 31959 (September 8, 1986).

A second suggestion was to not collect the NCPs in the 1991 or possibly even the 1992 model year if none of the manufacturers in the LDDT2 category had developed the technology required to comply with the particulate matter emission standard. Converter Technology also suggested that the implementation of the 0.13 g/mi emission standard should be dependent on the demonstration of a workable particulate control technology, and that if a manufacturer develops the technology prior to the 1991 model year, the technology should be incorporated into production vehicles at that time. EPA views the 1991 model year standard promulgated in this final rule as "technology-forcing." Section 202(a)(3)(A)(iii) of the Clean Air Act authorizes EPA to set "technology-forcing" particulate emission standards to provide manufacturers with the incentive to develop needed technology. Standards based on manufacturer's progress, by contrast, would not provide any incentive to further technology, especially in a category such as the LDDT2 that has very few manufacturers producing vehicles. The manufacturers,

of course, can incorporate the new technology into their vehicles at any time prior to the 1991 model year and the Agency would be pleased to see manufacturers do so.

Comments received from the Toyota Technical Center, USA, Inc. (Toyota) suggested that the 0.13 g/mi exhaust particulate standard may not be technologically feasible by the 1991 model year. Converter Technology also made this point. EPA believes that the standard is technologically feasible by 1991, based largely on the research and development plan set forth by GM, the major producer of vehicles in the LDDT2 category, in its petition to the Agency. EPA is not required to establish emission standards that every manufacturer can readily meet. The possibility that there may be technological laggards is the basis for NCPs being made available for the 0.13 g/mi exhaust particulate standard.

The standards for the 1987-90 model years are tighter than the 1986 model year standard of 0.60 g/mi and may require additional control measures, yet they will permit manufacturers to focus their attention and resources on development of a particulate trap-oxidizer system, instead of a system which refines existing technology. EPA has estimated that the 1991 standard of 0.13 g/mi is approximately equivalent in stringency to the particulate standard of 0.10 gram per brake horsepower-hour (g/BHP-hr) applicable to 1991 model year heavy-duty diesel bus engines and all 1994 and later model year heavy-duty engines (HDEs) to be installed in vehicles exceeding 8500 pounds GVWR. Thus, the 0.13 g/mi particulate standard will most likely require the development and installation of traps, because EPA has already found that the 0.10 g/BHP-hr standard will most likely require use of a trap-oxidizer system. See 50 FR 10606 (March 15, 1985).

EPA arrived at the 0.13 g/mi particulate standard for LDDT2s using the same methodology it employed for the 0.10 g/BHP-hr particulate standard for HDEs. That methodology considers such factors as trap efficiency, engine-out levels, deterioration rate for engine-out emissions, the availability of averaging for emission from different families, and compliance margin.

In their comments the Manufacturers of Emission Controls Association (MECA) indicates they do not feel that relaxation of the interim standards from the previously established 0.26 g/mi standard is a good precedent for the Agency to establish. Converter Technology felt that EPA might unwittingly be stifling technological development by relaxing the interim

standards. On the contrary, EPA believes this action is appropriate because relaxation of the interim standards will allow manufacturers to concentrate their respective resources on developing improved technologies.

c. Test Procedures

Mercedes-Benz of North America, Inc. (Mercedes-Benz) had several comments relating to the use of the presently defined exhaust particulate emission measurement procedure and the calculation procedure used for determining the deterioration factor. Mercedes-Benz believes that the present exhaust particulate measurement techniques are insufficient to reliably determine low levels of particulate matter. In addition, Mercedes-Benz does not believe that the present procedure for determining the deterioration factor addresses problems associated with extremely low particulate emission levels or problems associated with deterioration that might be non-linear. Mercedes-Benz did not provide information in its comments to support its concerns.

Discussions concerning the applicability of the present exhaust particulate measurement techniques and the deterioration factor have occurred in the past. Mercedes-Benz correctly notes an EPA workshop in July 1985, and a California Air Resources Board (CARB) workshop in July 1986, as two occasions on which these topics were discussed. Previous discussions have included concerns related to the minimum detectable limit of the present procedure and the accuracy and precision of the present test procedure at very low levels of particulate emissions. EPA intends to assess the present procedure for emission levels expected from vehicles meeting the 0.13 g/mi standard. Some refinements to the test procedure, such as increasing the flow through the sample filters, may be incorporated. EPA maintains ongoing programs to evaluate and update the test procedures, and is always willing to consider ideas and information helpful to refining the procedures.

d. Other Vehicle Classes

In the NPRM the Agency discussed the possibility that once the technology to meet the 0.13 g/mi standard was developed it could be applied to other vehicle categories and the emission standards tightened. EPA received several comments on its discussion. The Manufacturers of Emission Controls Association (MECA) commented that EPA should not delay lowering exhaust particulate standards for other light-duty truck and vehicle classes. NRDC stated

that exhaust particulate standards for other diesel applications should be tightened when the trap technology has been successfully demonstrated. Converter Technology stated that the technology developed for the LDDT2 category will be readily transferable across vehicle classes. Mercedes-Benz did not agree that the technology developed to meet the 1991 MY LDDT2 particulate emission standard would be readily transferrable to other vehicle classes.

EPA continues to believe that the technology developed to meet the 1991 model year particulate emission standard promulgated in this final rule may be transferable to other categories of diesel-powered vehicles, since the size, weight, and use of other light-duty vehicles is not substantially different from the LDDT2 category. However, the specific application of this technology to other vehicle classes is beyond the scope of this final rule. When the technology has been developed EPA will evaluate the applicability of the technology to other diesel-powered classes.

Converter Technology apparently was under the impression that the NPRM specifically proposed a reduction of the light-duty diesel vehicle (LDDV) particulate standard to 0.10 g/mi. Neither the NPRM nor this final rule affect the particulate matter emission standards applicable to LDDVs.

e. Averaging

In this final rule EPA is allowing particulate averaging between different engine families of LDDT2s, beginning with the 1991 model year. It does not permit particulate averaging between LDDT2s and other classes of vehicles, such as LDDT1s and diesel passenger vehicles. (The previous 1987 model year standard did permit such inter-class averaging.) Under some scenarios, inter-class averaging would permit manufacturers to avoid development of the trap technology for LDDT2s, while avoidance is unlikely if averaging is permitted only within the LDDT2 class. However, inter-class averaging will remain available between LDDT1s and diesel passenger vehicles. This approach to averaging allows manufacturers considerable flexibility in meeting the particulate standards while insuring that the air quality goals made possible by the development of trap technology will not be compromised.

NRDC expressed substantial concern regarding the provision that allows particulate averaging. MECA stated that it is inappropriate to allow averaging for the 1991 and later model years.

However, the allowance of averaging was a basic premise in EPA's development and evaluation of the reasonableness of the 0.13 g/mi standard. Specifically, EPA arrived at the 0.13 g/mi particulate standard assuming that 90 percent of the vehicles would use the trap technology. This assumption was appropriate since EPA's goal was to arrive at a standard equivalent to the 0.10 g/BHP hour HDE standards for which EPA had also assumed that 90 percent of vehicles would use traps. If EPA had assumed that averaging would not be made available for this particulate standard, EPA would have arrived at a somewhat higher emission standard than that being promulgated. Even with the use of averaging, manufacturers are still required to meet a substantially reduced particulate emission level beginning in the 1991 model year that significantly reduces particulate matter emissions from the LDDT2 vehicle class.

f. Nonconformance Penalty

Converter Technology argued that NCPs should not be made available because it may provide manufacturers with a more attractive alternative than developing and incorporating the required technology for production. It believes that the penalty formula is not adequate to provide enough incentive for manufacturers to finance new technology. As required by section 206(g)(3) of the Clean Air Act, 42 U.S.C. 7525(g), EPA designed NCPs to remove any competitive disadvantage to conforming manufacturers. The Agency established the NCP penalty formula in a prior rulemaking (50 FR 53454) and adheres to this formula for the reasons described below. The actual values for the penalties will be established in a separate rulemaking.

1. Availability

Because of the 0.13 g/mi particulate standard for 1991 and later model year LDDT2s is technology-forcing, EPA is making NCPs available for vehicles in the 6,001 to 8,500 pound GVWR category that fail to comply with the 1991 model year particulate emission standard.

EPA promulgated regulations governing the availability of NCPs in two parts. The Phase I NCP rulemaking (50 FR 35374, August 30, 1985) established generic criteria for determining the emission standards for which NCPs will be offered, generic criteria for establishing an upper limit (an emission level above which heavy-duty vehicles or engines cannot be certified or introduced into commerce), and the penalty rate formula for determining the NCP payment. The

Phase II NCP rulemaking (50 FR 53454, December 31, 1985) established specific emission standards for which NCPs were made available, the upper limits for those standards, and numerical values for the variables in the penalty rate formula for particular subclasses of engines and trucks. Among those standards for which NCPs were made available is the 1987 0.26 g/mi particulate standard applicable to LDDTs which are also heavy-duty vehicles (HDVs), i.e., those LDDTs having a GVWR between 6,001 and 8,500 pounds. Only the heavier portion of the LDDT2 class are also HDVs, because a vehicle which exceeds 3750 pounds LVW does not necessarily exceed 6000 pounds GVWR. See section II, above.

Because this final rule changes the 1987 and later model year particulate standard for LDDTs, NCP availability, upper limits and penalty rate values were reassessed for the 1987 and later heavy LDDT2s.

The Phase I NCP rulemaking established three "generic" criteria for determining the emission standards for which NCPs will be offered: the emission standard in question must become significantly more difficult to meet; substantial work must be required for compliance with the standard; and EPA must determine that a technological laggard is likely to develop. A technological laggard is a manufacturer which cannot meet the particular emission standard due to technological (not economic) difficulties and which consequently might be forced out of the marketplace.

This rulemaking relaxes the LDDT particulate standards now applicable to 1987 through 1990 MY LDDT2s. Thus, the regulations making available NCPs for the 0.26 g/mi standard are rescinded. The interim standards are not significantly more difficult to meet than the 1986 standard of 0.60 g/mi, substantial work to meet them is not required, and no technological laggard is likely. GM, in its amended petition, has indicated to EPA that its 6.2L engine family can meet these standards using technology currently available for production LDDTs, and EPA believes the same would be true for any other heavy LDDT2s in the market. Thus, NCPs are not available for the 1987 to 1990 model years LDDT2s.

This rulemaking establishes a 1991 and later model year LDDT2 particulate standard of 0.13 g/mi. This standard is significantly more difficult to meet than the previous 1987 and later model year standard of 0.26 g/mi, for which NCPs had been made available. It requires

advanced technology that is not yet perfected, and thus, a technological laggard may well develop. Accordingly, EPA believes it is appropriate to offer an NCP for the 1991 and later model year 0.13 g/mi particulate standard for heavy LDDT2s. However, NCPs are not available for LDDT2s which are not also HDVs (i.e., NCPs are not available for vehicles with 6,000 lbs. or less GVWR).

As noted above, an upper limit is an emission level above which HDVs or HDEs cannot be certified or introduced into commerce, despite the availability of NCPs. Where there is a previously applicable emission standard, that standard serves as the upper limit.

In the case of the 1991 and later model year LDDT2 particulate standard of 0.13 g/mi, the revised 1990 LDDT2 particulate standard of 0.45 g/mi is the previous applicable emission standard, and thus, is the 1991 upper limit.

2. Penalty Rates for 1991 LDDT2 Particulate Standard

EPA has not established penalty rates or NCP cost data for this rule. The cost values for "heavy" LDDT2s subject to the 1991 and subsequent model year LDDT2 particulate standard of 0.13 g/mi will be proposed and established in a subsequent and separate rulemaking. This will allow the Agency to collect and analyze more recent information.

IV. Impacts of the Final Rule

A. Environmental Impact

EPA analysis shows that establishment of a 0.13 g/mi standard beginning in 1991 should create important environmental benefits by causing a long-term net decrease in diesel particulate emissions and thus reducing the hazards associated with diesel particulate matter.

In the short run, the impact of the temporary relaxation of the particulate standards applicable to LDDT2s will be insignificant because of the small number of vehicles in this market. By far the greater proportion of LDTs are gasoline-fueled. Diesels currently compose only 6 percent of the LDT fleet. The small short-term negative effect will in time be reduced by the implementation of the more stringent particulate emissions standards beginning in the 1991 model year. EPA estimates that cumulative LDDT2 particulate emissions resulting from relaxing, then later tightening, the standard will reach the "break-even" point in the mid-to late 1990s. The "break-even" point is the point at which the cumulative emissions average, under the amended standards, results in the

emissions level that would have been expected to occur had the standard remained 0.26 g/mi throughout. EPA expects net reductions to occur once the "break-even" point is surpassed, with the magnitude of the reduction depending on the amount of diesel sales penetration of the LDT market. (See No. IIA-B-1.) This scenario assumes moderate growth in all LDT sales. As mentioned previously, this emission benefit may be greater if the particulate trap technology developed for LDDT2s is transferable to lighter vehicle classes, and EPA sets more stringent standards for those classes. If all LDDT2s comply with the 0.13 g/mi standard beginning in 1991, it will create a net particulate emissions reduction of as much as 24,746 tons by the year 2000, a reduction of more than 25 percent compared to the base case of a 0.26 g/mi standard for all LDDT2s starting in 1987. (See, No. IIA-B-1.)

B. Economic Impact

To determine the economic impact of the 0.13 g/mi particulate standard, EPA looks to a preliminary analysis performed for estimating the NCP associated with the 0.13 g/mi particulate standard for 1991 and later model year heavy LDDT2s. This analysis shows that the cost to manufacturers and owners of achieving compliance with the 0.13 g/mi particulate standard, is about \$487 per vehicle. In its petition, GM has estimated that it will spend \$50 million

on engineering to develop an emissions control system to bring its 6.2L engine family LDDT2s into compliance with the 0.13 g/mi particulate standard by 1991. EPA estimates the average cost to manufacturers to be \$10 million per year.

The fact that GM proposed the 0.13 g/mi strategy raises a strong presumption that the resulting net reduction in particulate emissions will not be purchased at an unreasonable cost. Confidential business information on file with EPA's Certification Division shows that the GM 6.2L vehicles composed the bulk of the LDDT2 market for 1986 and 1987 and are the only vehicles being sold in the LDDT2 category for the 1988 model year. As far as the Agency is aware, GM may be the only manufacturer who will be significantly affected by the change to the 0.13 g/mi standard in 1991. The Agency received no comments addressing the economic impact of this rulemaking on any other motor vehicle manufacturers, owners, or other interested parties.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it will have an economic impact of less than \$100 million per year, and will not have

significant adverse effects on competition, productivity, investment, employment or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

Effect on Small Entities

Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have impact on a substantial number of small entities. Few, if any, small entities market LDDT2s.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air Pollution Control, Gasoline, Motor Vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Sections 202, 203, 207, 208, 215, and 301(b) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

Dated: October 21, 1988.

John A. Moore,

Acting Administrator.

TABLE OF CHANGES

Section	Change	Reason
1. Part 86, authority	Add cites	Clarification.
2. section 86.087-2	Add paragraph to define "Composite particulate standard." Add paragraph to define "Production weighted average".	Do.
3. Section 86.087-9: (a)(1)(iv)	Amend paragraph to reflect change in standard for LDDT2; revise averaging of vehicle emissions.	This is a new requirement.
(d)(1)(iv)	Amend paragraph to denote LDDT1 only	Remove LDDT2 high-altitude particulate standard.
4. Section 86.088-9: (a)(1)(iv)	Amend paragraph to reflect change in standard for LDDT2; revise averaging of vehicle emissions.	This is a new requirement.
(d)(1)(iv)	Amend paragraph to denote LDDT1 only	Remove LDDT2 high-altitude particulate standard.
5. Section 86.091-9	Add language to define 1991 model year LDT emission standards; define averaging of vehicle emissions.	Incorporate a new requirement of LDDT2 particulate emissions at all altitudes.
6. 85.1105-87: (a)	Removed and Reserved.	Remove requirement.
(c)	Allow NCP for 1991 LDDT2 particulate standard for Heavy-Duty Engines.	New requirement.

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

PART 86—[AMENDED]

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

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7601(a).

2. A new § 86.087-2 of Subpart A is added to read as follows:

§ 86.087-2 Definitions.

"Composite particulate standard" for

a manufacturer which elects to average diesel light-duty vehicles and diesel light-duty trucks with a loaded vehicle weight equal to or less than 3,750 lbs (LDDT1s) together in the particulate averaging program, means that standard calculated according to the following equation and rounded to the nearest hundredth gram per mile:

$$\frac{(\text{PROD}_{\text{LDV}})(\text{STD}_{\text{LDV}}) + (\text{PROD}_{\text{LDDT1}})(\text{STD}_{\text{LDDT1}})}{(\text{PROD}_{\text{LDV}}) + (\text{PROD}_{\text{LDDT1}})} = \text{Manufacturer composite particulate standard}$$

Where:

PROD_{LDV} represents the manufacturer's total light-duty vehicle production for those engine families being included in the average for a given model year.

STD_{LDV} represents the light-duty vehicle particulate standard.

$\text{PROD}_{\text{LDDT1}}$ represents the manufacturer's total diesel light-duty truck production for those engine families with a loaded vehicle weight equal to or less than 3,750 lbs which are being included in the average for a given model year.

$\text{STD}_{\text{LDDT1}}$ represents the light-duty truck particulate standard for diesel light-duty trucks with a loaded vehicle weight equal to or less than 3,750 lbs.

"Production-weighted average" means the manufacturer's production-weighted average particulate emission level, for certification purposes, of all of its diesel engine families included in the particulate averaging program. It is calculated at the end of the model year by multiplying each family particulate emission limit by its respective production, summing these terms, and dividing the sum by the total production of the affected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area. Diesel light-duty trucks with a loaded vehicle weight equal to or greater than 3,751 lbs (LDDT2s) shall only be averaged with other diesel light-duty trucks with a loaded vehicle weight equal to or greater than 3,751 lbs produced by that manufacturer.

3. Section 86.087-9 of Subpart A, is amended by revising paragraph (a)(1)(iv) and adding paragraph (d)(1)(iv), to read as follows:

§ 86.087-9 Emission standards for 1987 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.50 grams per vehicle mile (0.31 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck

engine families subject to the standard of paragraph (a)(1)(iv)(A) of this section in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085-2.

(d)(1) * * *

(iv) *Particulate emissions* (diesels only). For light-duty trucks up to and including 3,750 lbs. loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

4. Section 86.088-9 of Subpart A, is amended by revising paragraphs (a)(1)(iv) and (d)(1)(iv), to read as follows:

§ 86.088-9 Emission standards for 1988 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.45 grams per vehicle mile (0.28 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the standard of paragraph (a)(1)(iv)(A) of this section in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty

vehicles included in the average and is calculated as defined in § 86.085-2.

(d)(1) * * *

(iv) *Particulate emissions* (diesels only). For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 gram per vehicle kilometer).

5. A new § 86.091-9 is to be added, to read as follows:

§ 86.091-9 Emission standards for 1991 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 1991 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons*. 0.8 grams per vehicle mile (0.5 grams per vehicle kilometer).

(ii) *Carbon monoxide*. (A) 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen*. (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the NO_x averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3,750 lbs loaded vehicle weight included in the average and is calculated as defined in § 86.085-2.

(iv) *Particulate emissions* (diesels only). (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.13 grams per vehicle mile (0.03 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and that light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section may be averaged only with other light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085-2.

(2) The standards set forth in paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1991 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons*. 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1991 and later model year light-duty truck.

(d)(1) Model year 1991 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons*. 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

(ii) *Carbon monoxide*. (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen*. (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.13 grams per vehicle mile (0.08 grams per vehicle kilometer).

(2) The standards set forth in paragraphs (d)(1)(i), (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(e)(1) Fuel evaporative emissions from 1991 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.8 grams per test when tested under high altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1991 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high-altitude emission standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class,

transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 1985 and later model year vehicles from compliance with the high-altitude emission standards set forth in paragraphs (d) and (e) of this section if the vehicles are not intended for sale at high altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (g)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$ where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84 D/W)^{-0.9}$ where the constant, C, is the same as that found in paragraph (g)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (g)(2)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (g)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicles configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (g)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (g)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance

with good engineering practice, to meet the exemption criteria of paragraph (g)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

Subpart L—[Amended]

6. Section 86.1105-87 of Subpart L is amended by removing and reserving paragraph (a), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

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

(a) [Reserved]

(c) Effective in the 1991 model year, NCPs will be available for the following emission standards: (1) Diesel light-duty truck (rated in excess of 6,000 pounds GVWR) particulate emission standard of 0.13 grams per vehicle mile.

[FR Doc. 88-24963 Filed 10-28-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 261 and 302

[FRL-3469-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to remove iron dextran (ferric dextran) (CAS No. 9004-66-4) from § 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove iron dextran from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA also is removing iron dextran from the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is taking this action because iron dextran, when improperly treated, stored, transported, disposed of, or otherwise managed, is not capable of posing a substantial present or potential

hazard to human health or the environment.

DATE: This regulation becomes effective on October 31, 1988.

ADDRESSES: The Office of Solid Waste (OSW) docket is located in the sub-basement at 401 M Street, SW., Washington, DC 20460, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Refer to "Docket number F-85-IDEP-FFFFF" when making appointments to review any background documents for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost \$0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Denny Cruz, Office of Solid Waste (SW-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4802.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1985, EPA proposed to amend its regulations under RCRA to remove iron dextran from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove iron dextran from Appendix VIII of Part 261, the list of RCRA hazardous constituents (50 FR 46468). EPA also proposed to remove iron dextran from the CERCLA list of hazardous substances. This proposal responded to an August 9, 1983, petition submitted by Fisons Corporation pursuant to § 260.20 to delist iron dextran.

The Agency originally listed iron dextran in 40 CFR 261.33(f) (EPA Hazardous Waste No. U139) and Appendix VIII based upon the listing criteria in 40 CFR 261.11(a)(3)(i)-(xi) and the Agency's Carcinogen Assessment Group (CAG) assessment that iron dextran exhibited sufficient evidence of carcinogenicity. Iron dextran has been designated as a Class B2 carcinogen by CAG according to EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992) based upon sufficient evidence of carcinogenicity in animals, but inadequate data in humans. A further review of the evidence for the carcinogenicity dextran reveals that it is limited to studies in which iron dextran was given to experimental animals by subcutaneous or intramuscular injection;