

forth nonconformance penalties for gasoline-fueled and diesel heavy-duty engines (HDEs) and heavy-duty vehicles (HDVs), including certain light-duty trucks. Section 206(g) of the CAA requires EPA to issue a certificate of conformity for HDEs or HDVs that exceed an applicable emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking.

Over time EPA has promulgated three regulatory sections which set forth the upper emission limit for which an NCP can be established. Each time EPA promulgated one of these regulatory sections, the promulgation of the new section effectively limited the applicability of the existing section. When EPA first passed § 86.1104-87, this section established the upper limit for model year (MY) 1987 and all subsequent model years. But when EPA promulgated § 86.1104-90 for MY1990 and later models, the new section's promulgation limited § 86.1104-87's applicability to MY1987 through MY1989. Similarly, when EPA promulgated § 86.1104-91 for MY1991 and subsequent model years this promulgation had the effect of limiting § 86.1104-90's applicability to MY1990 only.

Because both § 86.1104-87 and § 86.1104-90 are time limited to model years that have passed, they have no legal effect for current or future model years. EPA is therefore removing §§ 86.1104-87 and 86.1104-90 from the CFR.

40 CFR §§ 86.1105-87(b) and 86.1105-87(c)(1). Section 86.1105-87 designates those emission standards for HDEs and HDVs for which the payment of a NCP is an option in the event an HDE or HDV exceeds the applicable emission standard. Some of these NCP provisions are now obsolete because the emission standards to which they relate are no longer in effect for current or future model years. Section 86.1105-87(b), which makes NCPs available for diesel HDEs that exceed an oxides of nitrogen (NO_x) emission standard of 6.0 grams per brake horsepower-hour (g/bhp-hr) beginning in MY1990 or a particulate (PM) emission standard of 0.60 g/bhp-hr beginning in MY1988, is obsolete because these emissions standards no longer apply to current or future model years. Beginning with MY1991 diesel HDEs, the NO_x emission standard changed to 5.0 g/bhp-hr, while the PM standard changed to 0.25 g/bhp-hr. See 40 CFR 86.091-11(a)(1)(iii)-(iv). Similarly, § 86.1105-87(c)(1), which allows NCPs for petroleum-fueled diesel

HDEs MY1991 or later that exceed 0.25 PM g/bhp-hr, is now obsolete because the PM standard for MY1994 and later model year diesel HDEs is 0.07 or 0.10 g/bhp-hr, depending on whether the engine is used in an urban bus. See 40 CFR 86.094-11(a)(1)(iv). Accordingly, EPA is removing paragraphs (b) and (c)(1) of § 86.1105-87 from the CFR.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The CAA and Administrative Procedure Act generally require EPA to provide prior notice and opportunity for public comment before issuing a final rule. 42 U.S.C. 7607(d), 5 U.S.C. 553(b), (c). Rules are exempt from this requirement if EPA finds for good cause that notice and comment are unnecessary. 42 U.S.C. 7607(d)(1), 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a "significant" regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide,

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 65

Environmental protection, Air pollution control.

40 CFR Part 85

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

40 CFR Part 86

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

Dated: June 8, 1995.

Mary D. Nichols
Administrator

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 7401-7671q, title 40, chapter I of the Code of Federal Regulations is amended as follows: