

EPA—APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
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Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice				
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567–20.2	Definitions	9/21/05	12/20/05 [insert FR page number where the document begins]	The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance source are not SIP approved.
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Chapter 21—Compliance				
* * * * *				
567–21.2	Variations	7/13/05	12/20/05 [insert FR page number where the document begins]	
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Chapter 22—Controlling Pollution				
* * * * *				
567–22.1	Permits Required for New or Existing Stationary Sources.	7/13/05	12/20/05 [insert FR page number where the document begins]	Subrules 22.1(2) and 22.1(2) “i” have a state effective date of 5/23/01.
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567–22.3	Issuing Permits	7/13/05	12/20/05 [insert FR page number where the document begins]	Subrule 22.3(6) is not SIP approved.
* * * * *				
567–22.209	Change of Ownership for Facilities with Voluntary Operating Permits.	7/13/05	12/20/05 [insert FR page number where the document begins]	
567–22.300	Operating Permit by Rule for Small Sources.	7/13/05	12/20/05 [insert FR page number where the document begins]	Subrule 22.300(7) “c” has a state effective date of 10/14/98.
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Chapter 25—Measurement of Emissions				
* * * * *				
567–25.1	Testing and Sampling of New and Existing Equipment.	7/13/05	12/20/05 [insert FR page number where the document begins]	
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PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Appendix A to Part 70—[Amended]

■ 2. Appendix A to part 70 is amended by revising paragraph (h) under “Iowa” to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Iowa

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(h) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.101(2), 567–22.102, 567–22.105(1), 567–22.108(17)“a”(2), 567–22.209 and 567–22.300(12) on July 18, 2005. The state effective date was July 13, 2005. These revisions to the Iowa program are approved effective February 21, 2006.

[FR Doc. 05–24259 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–8005–4]

RIN 2060–AJ77

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-Board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium Duty Passenger Vehicles, Complete Heavy Duty Vehicles and Engines Intended for Use in Heavy Duty Vehicles Weighing 14,000 Pounds GVWR or Less

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing certain requirements associated with the Federal on-board diagnostic (OBD) system regulations. On June 17, 2003, EPA published both a direct final rule and a concurrent notice of proposed rulemaking (68 FR 35972 and 68 FR 35830 respectively) to amend and revise certain provisions of the Federal OBD regulations. EPA published the direct final rule believing that no adverse comments would be received. However, due to the receipt of an adverse comment, EPA published a partial withdrawal notice on August 14, 2003 (68 FR 48561) withdrawing two specific regulatory amendments included in the direct final rule. The direct final rule,

absent those two withdrawn provisions, became effective on August 18, 2003.

The purpose of this action is to finalize the portion of the direct final rule that was withdrawn with the revisions suggested by the commenters and to clarify several smaller issues that were raised by industry during the comment period.

DATES: This final rule takes effect on February 21, 2006.

ADDRESSES: All comments and materials relevant to today's action are contained in Public Docket No. OAR-2003-0080 (old legacy docket is A-2002-20) at EPA's Air and Radiation Docket and Information Center (Air Docket) at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington,

DC 20460. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Arvon Mitcham, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Certification and Compliance Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214-4522, e-mail "mitcham.arvon@epa.gov."

Regulated Entities: Entities potentially regulated by this action are those which manufacture new motor vehicles and engines.

Category	Examples of regulated entities	NAICS codes ^a	SIC codes ^b
Industry	New motor vehicle and engine manufacturers	33611, 336112, 336120	3711

^aNorth American Industry Classification System (NAICS) Code.

^bStandard Industrial Classification (SIC) System Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.005-17, § 86.1806-04 and § 86.1806-05 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Electronic Availability

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

EPA Federal Register Web Site: <http://www.epa.gov/docs/fedrgstr/epa-air/>.

OTAQ's Web site: <http://www.epa.gov/otaq/url-fr.htm>.

(Either select a desired date or use the Search feature.)

II. Introduction and Background

On February 19, 1993, pursuant to Clean Air Act (CAA) section 202(m), 42 U.S.C. 7521(m), EPA published a final rulemaking (58 FR 9468) requiring manufacturers of light-duty vehicles (LDVs) and light-duty trucks (LDTs) to install on-board diagnostic (OBD) systems on such vehicles beginning with the 1994 model year. The regulations promulgated in that final rulemaking require manufacturers to install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the technician in diagnosis and repair.

Additionally, this original OBD regulation provided an allowance for manufacturers to satisfy federal OBD requirements through the 1998 model year by installing OBD systems satisfying the OBD II requirements promulgated by the California Air Resources Board (CARB) pertaining to those model years. On December 22, 1998 (63 FR 70681), EPA revised the federal OBD regulations such that the allowance of compliance with the

California OBD II regulations (excluding anti-tampering provisions) extended indefinitely, rather than applying only through the 1998 model year. In addition, EPA updated the allowed version to the most recently published version, at that time, CARB Mail-Out #97-24 (December 9, 1997).

On June 17, 2003, EPA published both a direct final rule and a concurrent notice of proposed rulemaking (68 FR 35972 and 68 FR 35830 respectively) to amend and revise certain provisions of the federal OBD regulations. Among other several minor revisions, this action also updated the allowed version of the California OBD II regulations; and updated the incorporation by reference of standardized practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to incorporate recently published versions. This action also incorporated by reference a new standardized protocol developed by the International Organization for Standardization (ISO 15765-4.3) and established a future date, model year 2008, by which this protocol would be the only acceptable protocol.

EPA received comments from the Engine Manufacturers Association (EMA) and Cummins that the direct final rule did not continue to allow the use of the heavy-duty communication protocol, SAE J1939, as currently allowed under the Federal OBD and CARB OBD II requirements, beyond the 2007 model year for vehicles that are not optionally certified to CARB's 1968.2 OBD II requirements. EMA commented that the direct final rule required that 2008 and later model year heavy-duty engines and vehicles under 14,000 lbs. GVWR that are certified to the Federal OBD technical monitoring requirements must use the ISO 15765-4.3 communication protocol. EMA and Cummins commented that this is not consistent with CARB's requirements for medium duty vehicles (between 8500 and 14,000 lbs. GVWR), nor is it consistent with the existing communication protocols developed for the unique operational characteristics of heavy-duty vehicles. As a result, EPA withdrew the portion of the direct final rule establishing the requirement that by model year 2008, ISO 15765-4.3 would be the only acceptable protocol. This final action addresses the comments of EMA and Cummins and finalizes revised regulations incorporating those comments.

In addition, EPA received comments from the Alliance of Automobile Manufacturers ("the Alliance") and the Association of International Automobile

Manufacturers (AIAM) requesting clarification of certain aspects of the direct final rule. The Alliance and AIAM requested that their comments not be considered "adverse" unless their understanding of EPA's intent was incorrect. The Alliance and AIAM specifically expressed interest that EPA clarify that the new OBD requirements, as applied to Tier 2 vehicles, would be phased-in on the same schedule as CARB's LEV II program. As explained below, EPA believes it appropriate to clarify not only this phase-in requirement but also to clarify what malfunction thresholds apply when comparing LEV II and Tier 2 programs. The Alliance and AIAM also sought clarification from EPA as to whether production testing for OBD would be required and whether EPA was adopting CARB's new enforcement specific provisions relating to OBD. Because EPA is further clarifying its intent and does not disagree with commenters' understanding, EPA did not consider these comments adverse. Finally, the Alliance and AIAM requested that EPA reference the final version of CARB's OBD II regulations contained in Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003. At the time, EPA referenced the latest version of the CARB OBD II regulations contained in CARB Mail-Out MSCD #02-11 (October 7, 2002) to allow manufacturer OBD certification according to the optional compliance provisions in paragraph (j) of the Federal OBD Regulations. This final action will address those comments as well.

III. Requirements of the Final Rule

A. Use of SAE J1939 Communication Protocol Beyond Model Year 2007

In the June 17, 2003 Direct Final Rule, EPA incorporated by reference a new, optional standardized communication protocol, ISO 15765-4.3:2001, December 14, 2001, "Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems" at 500 kilobytes per second (kbps) baud rate, that can be used by manufacturers to design OBD systems. The standardized communication protocols provide a uniform language structure that facilitates compatibility between OBD II equipped vehicles and OBD II-related equipment. Manufacturers of light-duty vehicles and trucks are planning to implement this new protocol on vehicles, and some have done so as early as the 2003 MY, in addition to the existing communication protocols: SAE

J1939, SAE J1850, ISO 9141, and ISO 14230-4.

In addition, EPA also included a provision that, commencing in the 2008 model year, would have required manufacturers to use this new communication protocol, ISO 15765-4.3 (500 kbps baud rate) for vehicles and engines below 14,000 lbs. The currently allowed communication protocols (SAE J1939, SAE J1850, ISO 9141, and ISO 14230-4) would have been eliminated for vehicles and engines below 14,000 lbs. Therefore, with the 2008 model year, the other, currently-accepted protocols: SAE J1939, SAE J1850, ISO 9141-2 and ISO 14230-4, would no longer be accepted for all vehicles and engines below 14,000 lbs. and all manufacturers of vehicles and engines below 14,000 lbs. would have been required to implement OBD systems using only ISO 15765-4.3 (500 kbps baud rate).

The Direct Final Rule did not distinguish between medium-duty vehicles (at or above 8500 and 14000 pounds GVWR) and light-duty vehicles and trucks (below 8500 pounds). While no one objected to this provision as it applied to light-duty vehicles and trucks, EMA and Cummins commented that this provision would unintentionally eliminate the use of SAE J1939 for vehicles and engines between 8500 and 14000 pounds GVWR. EPA believes that it is reasonable to allow medium-duty engine and vehicle manufacturers between 8500 and 14000 pounds GVWR to continue to use communication protocol SAE J1939 beyond the 2008 model year along with the new protocol.

Therefore, EPA is finalizing a provision requiring that the only allowable protocols will be ISO 15765-4.3 (500 kbps baud rate) for vehicles 8500 pounds GVWR and below and either SAE J1939 or ISO 15765-4.3 (500 kbps baud rate) for vehicles 8500 to 14000 pounds GVWR beginning with the 2008 MY. Accordingly, with the 2008 model year, the other currently-accepted protocols SAE J1850, ISO 9141-2 and ISO 14230-4, would no longer be accepted.

B. Applicable Phase-Ins for OBD System Monitoring Requirements for Federal Vehicles Certifying by Demonstrating Compliance With California OBD II

EPA received comment from the Alliance and AIAM regarding the certification of federal Tier 2 vehicles to California OBD II regulations that reference California LEV II standards. CARB's regulations phase-in additional OBD requirements to coincide with the phase-in of LEV II vehicles. Beginning

in the 2004 model year, CARB phases in new OBD II requirements to coincide with the LEV II requirements at 25, 50, 75, and 100 percent over four model years. The new OBD II requirements are for: NO_x conversion capability (Title 13 CCR 1968.2 (e)(1.2.2)), secondary air monitoring (Title 13 CCR 1968.2 (e)(5.2.3)), continuous oxygen sensor monitoring (Title 13 CCR 1968.2 (e)(7.3.1)(B)(ii) and (e)(7.3.2)(B)(ii)), cold start emission reduction strategy monitoring (Title 13 CCR 1968.2 (e)(11.1.1)), crankshaft and camshaft alignment for variable valve timing (VVT)- and timing belt/chain-equipped vehicles (Title 13 CCR 1968.2 (e)(16.1.2)), and MIL illumination for comprehensive component malfunctions on SULEV II applications only if they cause emissions increase equal to or greater than 25% (Title 13 CCR 1968.2 (e)(16.4.2)(A)).

These provisions create some confusion for vehicles that are certifying to Federal emission requirements during those four years but using the option of meeting federal OBD requirements by demonstrating compliance with California's OBDII regulations. Since EPA's regulations do not reference California's LEV II regulations, the provisions of California's OBD II regulations that distinguish LEV II vehicles do not directly correspond to federal regulations; in particular, EPA's Tier 2 regulations.

The Alliance and AIAM commented that EPA's Direct Final Rule was not clear on how OBD requirements that apply only to LEV II vehicles would be applied to vehicles certified to EPA's Tier 2 emissions standards. The Alliance and AIAM further commented that it has been EPA's policy in the past to require the same OBD requirements for a specific model vehicle produced for sale outside of California as those that apply in that model year for that model vehicle in California. The Alliance and AIAM asked EPA to confirm their position on this policy and to issue guidance as appropriate to verify EPA's position.

EPA's Tier 2 standards follow a phase-in that is similar to the phase-in of LEV II controls in California. Tier 2 standards begin for all vehicles in the 2004 model year but have a phase-in of final Tier 2 vehicle emission standards of 25, 50, 75, and 100 percent in the 2004, 2005, 2006 and 2007 model years, respectively, and a corresponding phase-out for interim non-Tier 2 vehicle emission standards of 75, 50, 25, and 0% over those four model years. This allows the phase-in of the new California OBD II requirements to be phased-in to the federal fleet in

generally the same time frame as the California fleet, using the phase-in of the final Tier 2 standards as a general surrogate to the phase-in of LEV II standards, recognizing that there is likely to be considerable correspondence between vehicles certified to LEV II standards in California to vehicles certified to final Tier 2 standards federally.

EPA agrees with the comments made by the Alliance and AIAM that we reiterate our intentions to maintain the current policy that allows OEMs to phase-in CARB's new OBD II monitoring requirements on the same schedule for vehicles sold outside of California (for those vehicles certified by EPA to the "50 State" or "49 State" standards). Therefore, the phase-in of CARB's LEV II OBD II requirements for the monitors outlined above generally should meet the same phase-in and be phased in with the Federal Tier 2 final emission standards at 25, 50, 75, and 100 percent as specified in EPA's Tier 2 regulation over four model years and shall apply to vehicles sold outside of California. EPA recognizes that there may not be exact correspondence between the levels of LEV II vehicles sold in California and the levels of corresponding vehicles sold federally, and thus is not requiring exact correspondence to the phase-in levels for final Tier 2 standards, but EPA is expecting relatively similar levels during the phase-in years.

C. OBD System Design and Applicable Malfunction Thresholds for Federal Vehicles Certifying by Demonstrating Compliance With California OBD II

In reviewing the comments from the Alliance/AIAM discussed above, EPA realized that it may not be clear in some cases what the applicable OBD malfunction threshold is for Federal vehicles certifying to Federal OBD requirements by showing compliance with CARB OBD II regulations. Traditionally, OEMs certifying to EPA emissions standards but optionally complying with CARB OBD II requirements would use the applicable CARB OBD II malfunction thresholds (i.e., 1.75 times the applicable standard) as a multiplier for the applicable EPA emission thresholds. Although this optional compliance allowed manufacturers to certify a CARB OBD II system on a federal vehicle, the applicable EPA emission standards must be applied, in lieu of the California emission standards, when certifying a Federal vehicle or engine. This was possible in the past without further clarification because the relationship of the malfunction thresholds to the

underlying standards under the OBD II regulations was not tied to the type of California vehicle (e.g. TLEV, LEV, ULEV, etc) being certified. However, because the revised California OBD II standards have different multiples based on the type of California LEV II vehicle being certified, and because LEV II emission bins are not identical to the emission bins for the federal Tier 2 program,¹ EPA needs to clarify the manner in which the thresholds in California's OBDII requirements should be incorporated into the federal requirements. Therefore, EPA is adding regulatory language to clarify this issue.

EPA is clarifying that vehicles certified to Federal Tier II emissions standards but complying with Federal OBD by showing compliance with CARB OBD II regulations are subject to all OBD monitoring requirements applicable to LEV II applications (subject to the phase-in discussed above), but shall use Tier 2 emissions standards for the purposes of determining malfunction thresholds as described below. CARB has similar provisions in their OBD II regulations contained in Title 13 CCR 1968.2 (c)(20), and (e)(18.1.3) but these provisions only relate to vehicles and engines certified for use in California (i.e., California-only or 50-state vehicles and engines).

Where the Federal standards correspond directly to California standards, this operation is simple, as the manufacture would simply use the thresholds in the OBD II regulations that correspond to the California LEV II vehicle type (e.g. ULEV, SULEV) matching the Federal bin to which the federal vehicle is certified. As noted above, there is one instance where an EPA Tier 2 bin does not have a corresponding CARB LEV II Program emissions category and the emission standards serving as the basis for calculating the malfunction thresholds are not identical. Tier 2 Bin 4 NMOG standard of 0.07 g/mi, and NO_x standard of 0.04 g/mi and CO standard of 2.1 g/mi, has no corresponding CARB LEV II Program' emissions category. This Tier 2 bin falls between the CARB LEV II Program LEV II emissions category (0.09 g/mi NMOG, NO_x standard of 0.07 g/mi and CO standard of 2.1 g/mi) and the ULEV II emissions category (0.055 g/mi NMOG, 0.07 g/mi NO_x, 2.1 g/mi CO). Using the NMOG

¹ There is one instance where an EPA Tier 2 bin does not have a corresponding CARB LEV II emissions category, (bin 4), and two other instances concerning OBD where the EPA and CARB emission standards for individual criteria pollutants are not identical: The NO_x standard for Tier 2 Bin 3 and the CO standards for Tier 2 Bin 2.

criteria pollutant as an example, the

table below highlights this dilemma (all numbers in grams per mile):

Federal Tier 2 bin number	Tier 2 Full Useful Life NMOG emission standards	Federal OBD NMOG threshold	CARB OBD II NMOG threshold	California LEV II Full Useful Life NMOG emission standards	California LEV II emissions category
5	0.09	0.1575	0.1575	0.09	LEV II.
4	0.07	0.1225
3	0.055	0.09625	0.09625	0.055	ULEVII.

Therefore, we are clarifying in this final rule the method and the appropriate malfunction threshold values for a vehicle or engine certified to Tier 2 Bin 4 but optionally complying with CARB OBD II which is to use the Tier 2 Bin 4 emission standards and the CARB ULEV II multiplicative factors for all pollutants except NO_x, (e.g., 1.75 times the standard for NMOG, CO and PM catalyst monitoring, 1.5 times the standard for all other monitors except comprehensive components) and the SULEV II multiplicative emission factors for NO_x (e.g. for LDVs, 3.5 times the NO_x emission standard for model years 2005 and 2006 and 2.5 times the NO_x emission standard for model year 2007 and beyond for catalyst monitoring; 2.5 times the emission standard for all other NO_x monitors except comprehensive components) to determine the appropriate OBD malfunction threshold.

In addition, there are two instances where the EPA Tier 2 and CARB LEV II emission standards for individual criteria pollutants are not identical: The NO_x standard for Tier 2 Bin 3, which is 0.03 g/mi, compared the 0.07 g/mi standard for ULEVs, and the CO standard for Tier 2 Bin 2, which is 2.1 g/mile, compared to 1.0 g/mile for SULEVs.

To resolve these issues, vehicles certified to Tier 2, Bin 3 emissions standards shall utilize the Tier 2 Bin 3 NO_x emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. Vehicles certified to Tier 2, Bin 2 emissions standards shall utilize the Tier 2 Bin 2 CO emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. For vehicles certified to federal bin 7 and higher, manufacturers must use the multipliers for Cal LEV II vehicles and the federal standards to determine their thresholds.

IV. Other Issues Raised by Industry During the Comment Period

A. Production Vehicle Testing

The Alliance and AIAM commented that the CARB OBDII regulations require manufacturers to conduct production vehicle testing. The Alliance and AIAM requested that EPA clarify that production vehicle testing would not be required on federal vehicles certified to the CARB OBDII regulations. As an alternative, vehicle manufacturers said they would provide EPA copies of the final production vehicle evaluation reports that are provided to CARB as part of their certification process.

EPA agrees with the Alliance and AIAM comments that federal OBD regulations do not explicitly require manufacturers to conduct production vehicle testing. However, manufacturers who intend to meet the Federal OBD requirements by meeting the CARB OBDII requirements may be required to submit the same information that is submitted to CARB in order for EPA to make its own determinations of compliance. As a result, although EPA will not require the manufacturers to conduct production vehicle testing, the EPA may use the reports from the production vehicle testing program to assess in-use compliance. This is consistent with EPA policy to use all available information from the field to assess in-use compliance, of which the manufacturers are aware.

B. Enforcement

The Alliance and AIAM requested that EPA clarify that the new enforcement provisions finalized in the CARB OBDII regulations (section 1968.5) are not being adopted by EPA and that EPA will continue to conduct independent evaluations before determining enforcement actions.

EPA agrees with the Alliance and AIAM that our Direct Final Rule did not adopt the enforcement provisions enacted by CARB. EPA has no current intent to adopt such provisions. We will continue to conduct our own independent assessments and evaluations of manufacturer compliance

before pursuing enforcement actions. However, EPA will continue to use all available information, including, but not limited to, any information collected by CARB in making our compliance and enforcement determinations.

C. Referencing the Final Version of CARB's OBD II Regulations in Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2)

The Alliance and AIAM requested that EPA reference the final version of CARB's OBD II regulations contained in Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2) under paragraph (j) of the Federal OBD regulations allowing optional compliance with CARB OBD II requirements. The final version of CARB's OBD II Regulations Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2) was approved by the California Office of Administrative Law (OAL) and filed with the California Secretary of State on April 23, 2003.

The EPA agrees with this recommendation and will reference CARB's OBD II Regulations Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2) (April 23, 2003) in paragraph (j) of the Federal OBD regulations in this regulatory action.

V. Cost Effectiveness

The purpose of this rulemaking is to clarify existing provisions of EPA's OBD regulations. As a result, there are no cost effectiveness issues for this action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The modifications noted above do not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemakings (58 FR 9468, February 19, 1993; and 59 FR 38372, July 28, 1994 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (64 FR 23906) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0104, EPA ICR number 0783.47. A copy of the OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) Those businesses meeting the definition provided by the Small Business Administration (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's action provides clarification and correct reference information and does not add new regulatory burden on small entities. Periodically EPA must update its regulations to incorporate by reference any new applicable communication protocols (including those set forth by the SAE and the ISO) to be used by the OBD system. EPA had unnecessarily deleted the allowance of a certain SAE protocol for 2007 and later model year heavy-duty vehicles in a previous rulemaking and by today's final rule that protocol is placed back into the regulation.

Second, the phase-in of the new OBD II regulations in California is tied to a phase in of their new emission standards called LEV II (the second round of low-emission vehicle standards) that commence in the 2004 model year. EPA's Tier 2 emission standards (that also commences in 2004) are phased in with a similar schedule as LEV II and therefore, based on manufacturers' request, we are

clarifying that those manufacturers that choose to optionally certify their federal vehicles to CARB's OBD II regulations may do so based on the same phase-in of OBD II as allowed within California. However, because in a very few instances the emission standard levels of LEV II and Tier 2 do not completely match, we are also clarifying within the regulations what emission malfunction thresholds and emission levels apply to federal vehicles certified as meeting the OBD II regulations.

We are also adding reference to the final CARB "Mail-out" number for CARB's OBD II regulation as finalized. In addition, we have added clarification of whether EPA was adopting some of CARB's ancillary OBD II regulations such as the testing requirements on production vehicles and CARB's unique in-use testing and enforcement requirements. By today's action we are clarifying that EPA did not adopt such requirements by the direct final rule and is not otherwise doing so.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and

timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nor does this rule have any Federal mandates that may result in the expenditures of \$100 million or more in any year by the private sector as also defined by the provisions of Title II of the UMRA. Nothing in the rule will significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

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

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all

affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule updates provisions of an earlier rule that adopted national standards relating to OBD systems and the ability of manufacturers to demonstrate Federal compliance based on demonstration of compliance with California OBD II regulations. The requirements of the rule will be enforced by the Federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

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

This rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the Federal level and imposes compliance obligations and options on private industry. Thus, Executive Order 13175 does not apply to this rule.

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

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

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it is based on technology performance and not on health or safety risks.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule references technical standards adopted by us through previous rulemakings. Specifically, this rule references technical standards developed by the Society of Automotive Engineers (SAE) and the International

Standards Organization (ISO) related to the design and function of On-Board Diagnostic (OBD) systems on motor vehicles and engines below 14,000 pounds gross vehicle weight rating, for which today's action applies. No new technical standards are established in today's rule.

Statutory and Legal Authority

Statutory authority for today's final rule comes from the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202(m) of the Act (42 U.S.C. 7521(m)).

List of Subjects in 40 CFR Part 86

Environmental Protection, Incorporation by reference, Administrative practice and procedure, Motor vehicle pollution, On-board diagnostics.

Dated: November 29, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 86.005–17 is amended by adding paragraph (h)(3) and revising paragraph (j) to read as follows:

* * * * *

§ 86.005–17 On-board diagnostics.

* * * * *

(h) * * *

(3) Beginning with the 2008 model year and beyond, ISO 15765–4.3:2001 “Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems”, (December 14, 2001) shall be the only acceptable protocol used for standardized on-board to off-board communications for vehicles below 8500 pounds. For vehicles 8500 to 14000 pounds ISO 15765–4.3 or the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81). All other standardized on-board to off-board communications protocols: SAE J1850 “Class B Data Communication Network Interface,” (Revised, May 2001) in (h)(1)(i), ISO 9141–2 “Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,” (February 1, 1994) in (h)(2)(i), and ISO 14230–4 “Road vehicles—Diagnostic systems—KWP

2000 requirements for Emission-related systems”, (June 1, 2000) in paragraph (h)(2)(ii) of this section will at that time no longer be applied.

* * * * *

(j) *California OBDII compliance option.* For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

■ 3. Section 86.1806–04 is amended by revising paragraph (j) and adding paragraph (l) to read as follows:

§ 86.1806–04 On-board diagnostics.

* * * * *

(j) *California OBDII compliance option.* For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft

and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

(l) *Thresholds for California OBD II Compliance Option.* For the purposes of complying with the provisions set forth above in paragraph (j), vehicles certified to Tier 2 standards shall utilize multiplicative factors from the California vehicle type (i.e. LEV II, ULEV II) corresponding to the Tier 2 to which the vehicles are certified. Vehicles certified to Tier 2, Bin 4 emissions standards shall utilize the Tier 2 Bin 4 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_x, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 3 emissions standards shall utilize the Tier 2 Bin 3 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_x, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 2 emissions standards shall utilize the Tier 2 Bin 2 emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. Vehicles certified to Tier 2 Bin 7 or higher shall utilize the CARB LEV II multiplicative factors to determine the appropriate OBD malfunction threshold.

* * * * *

■ 4. Section 86.1806–05 is amended by adding paragraphs (h)(3) and (m) and revising paragraph (j) to read as follows:

§ 86.1806–05 On-board diagnostics.

* * * * *

(h) * * *

(3) Beginning with the 2008 model year and beyond, ISO 15765–4.3: 2001 “Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems”, (December 14, 2001) shall be the only acceptable protocol used for standardized on-board to off-board communications for vehicles below 8500 pounds. For vehicles 8500 to 14000 pounds ISO 15765–4.3 or the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81). All other standardized on-board to off-board communications protocols: SAE J1850 “Class B Data Communication Network Interface,” (Revised, May 2001) in paragraph (h)(1)(i), ISO 9141–2 “Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,” (February 1, 1994)

in (h)(2)(i), and ISO 14230-4 "Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems", (June 1, 2000) in paragraph (h)(2)(ii) of this section will at that time no longer be accepted

* * * * *

(j) *California OBDII compliance option.* For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

(m) *Thresholds for California OBD II Compliance Option.* For the purposes of complying with the provisions set forth above in paragraph (j), vehicles certified to Tier 2 standards shall utilize multiplicative factors from the California vehicle type (i.e. LEV II, ULEV II) corresponding to the Tier 2 to which the vehicles are certified. Vehicles certified to Tier 2, Bin 4 emissions standards shall utilize the Tier 2 Bin 4 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_x, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 3 emissions standards shall utilize the Tier 2 Bin 3 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_x, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 2 emissions standards shall utilize the Tier 2 Bin 2 emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. Vehicles

certified to Tier 2 Bin 7 or higher shall utilize the CARB LEV II multiplicative factors to determine the appropriate OBD malfunction threshold.

[FR Doc. 05-23669 Filed 12-19-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is revising the name of 48 CFR Chapter 2 from "Department of Defense" to "Defense Acquisition Regulations System, Department of Defense." This change will facilitate the Government's implementation of the Federal Document Management System, as it will permit the DoD regulations issued under 48 CFR Chapter 2 to be indexed separately from other DoD regulations.

DATES: *Effective Date:* December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, under the authority of 41 U.S.C. 421 and 48 CFR Chapter 1, 48 CFR Chapter 2 is amended by revising the name of the chapter to read "Defense Acquisition Regulations System, Department of Defense".

[FR Doc. 05-24220 Filed 12-19-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 213

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal

Acquisition Regulation Supplement to add references to DoD guidance on contracting officers' representatives and DoD purchase, travel, and fuel card programs.

DATES: *Effective Date:* December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350.

List of Subjects in 48 CFR Parts 201 and 213

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 201 and 213 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201 and 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Section 201.602-2 is amended by revising the introductory text to read as follows:

201.602-2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. Follow the procedures at PGI 201.602-2. A contracting officer's representative (COR)—

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Section 213.301 is amended by adding paragraph (4) to read as follows:

213.301 Governmentwide commercial purchase card.

* * * * *

(4) Guidance on DoD purchase, travel, and fuel card programs is available at <http://www.acq.osd.mil/dpap/pcard/pcardguidebook.htm>. Additional guidance on the fuel card program is available at <http://www.desc.dla.mil>.

[FR Doc. 05-24221 Filed 12-19-05; 8:45 am]

BILLING CODE 5001-08-P