available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Alfred Petersen, Rules Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 13, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

§ 52.220 [Amended]

■ 2. Section 52.220 is amended by removing paragraph (c)(351)(i)(C).

[FR Doc. E8–4829 Filed 3–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EPA–HQ–OAR–2004–0072; FRL–8539–3]

RIN 2060–A–069

In-Use Testing for Heavy-Duty Diesel Engines and Vehicles; Emission Measurement Accuracy Margins for Portable Emission Measurement Systems and Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In a rule published on June 14, 2005, EPA established a manufacturer-run, in-use testing program for heavy-duty diesel vehicles. The program requires engine manufacturers to measure exhaust emissions from their diesel engines using portable emissions measurement systems during real-world operation. At the time the rule was promulgated, EPA established interim emission measurement ''accuracy'' margins for the requisite portable emission measurement devices pending the development of final accuracy margins through a comprehensive research program. This Direct Final Rule adopts the resulting final accuracy margins for gaseous pollutants. Also, this rule makes several changes to the program in the early years of in-use testing. First, we are eliminating the first calendar year, i.e., 2006, of the two-year pilot program for particulate emissions (PM) in response to engine manufacturers' concerns, which primarily relate to the availability and efficacy of the requisite portable measurement systems (PEMS) for that pollutant. Second, due to a delay in developing the final accuracy margin for PM under the aforementioned comprehensive research program, we are delaying the first year of the fully enforceable PM test program from the 2008 calendar year to the 2009 calendar year. During the 2008 calendar year, there will be another year of pilot program testing for that pollutant. Third, and finally, we are extending the normal period for reporting in-use test results during the initial years of the program and allowing certain short-term changes in how vehicles are recruited and tested. These revisions are primarily intended to address delays in initiating the gaseous emission and PM pilot programs, manufacturers' concerns regarding the schedule for initial purchases of PM measurement systems, and manufacturers' concerns regarding potential difficulties of initially instrumenting vehicles with these units.

DATES: This is effective on May 12, 2008 without further notice, unless EPA receives adverse comment by April 14, 2008. If EPA receives adverse comment, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0072, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA Headquarters Library, EPA West Building, Room: 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0072. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/oar/dockets.html.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, EPA Headquarters Library, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4390; fax number: (734) 214–4939; e-mail address: *wilcox.rich@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are received on this rule. We will not institute a second comment period on this action, however. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment or a request for public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

This action will affect companies that manufacture and certify all-terrain vehicles for sale in the United States.

Category	NAICS code [a]	Examples of potentially affected entities
Industry	336112; 336120	Engine and Truck Manufacturers.
Industry	811112; 811198	Independent commercial importers of vehicles and parts.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

III. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as (CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Background

The manufacturer-run, in-use testing program for heavy-duty diesel vehicles that are used on the highway was promulgated in June 2005 to monitor the emissions performance of the engines used in those vehicles when operated under a wide range of real world driving conditions.[1] The program is specifically intended to monitor compliance with the applicable Not-to-Exceed (NTE) exhaust emission standards for non-methane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter (PM). It requires each manufacturer of heavy-duty highway diesel engines to assess the in-use exhaust emissions from their engines using onboard, portable emission measurement systems (PEMS) during typical operation while on the road.

The in-use testing program begins with a two-year pilot (i.e., demonstration) program for gaseous emissions (i.e., NMHC, CO, and NO_X) in calendar years 2005 and 2006. As originally adopted, the program also includes a pilot program for PM emissions in calendar years 2006 and 2007. The one-year offset acknowledged that the portable measurement system technology for PM emissions was lagging that for measuring gaseous emissions. The programs are fully enforceable after their respective pilot program ends, i.e., the 2007 calendar year for gaseous emissions and the 2008 calendar year for PM emissions. The enforceable program applies to 2007 and later model year diesel engines. Each manufacturer generally has 18 months to report all required test results for the engine families that EPA selects for testing in any calendar year.

For the purposes of the in-use testing program, EPA established a vehicle pass/fail criterion for each pollutant that compares a vehicle's measured in-use emissions to a corresponding numerical compliance limit, i.e., NTE threshold. The NTE threshold for each pollutant is the sum of the NTE standard, any in-use compliance testing margin that is already allowed by the regulations, and a new emission measurement accuracy margin associated with the use of PEMS. The PEMS accuracy margin is the difference between the emission measurement error for the portable instrument and the measurement error for ''laboratory grade'' instruments that are used to test vehicles or engines on a dynamometer in a laboratory setting. The accuracy allowances are expressed in the same numerical terms as the

[1] See ''Control of Emissions of Air Pollution From New York Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles, 70 FR 34594 (June 14, 2005).''

applicable NTE emission standards, i.e., grams of pollutant per brake horsepower-hour (g/bhp-hr).

When the in-use testing program was first established in June of 2005, there was uncertainty regarding what specific accuracy margins should be used in the in-use testing program, since the portable measurement devices that were expected to be used in the program had not been rigorously tested at that time. As a result, we promulgated interim accuracy allowances for use in the pilot programs.[2] These interim values were believed to represent an upper bound of the possible instrumentation variability based on our experience with portable and laboratory instruments and test methods.

In May of 2005, shortly before the in-use test program was promulgated, EPA entered into a memorandum of agreement (MOA) with the California Air Resources Board (CARB) and the manufacturers of heavy-duty highway diesel engines (through the Engine Manufacturers Association (EMA)) to develop ''data driven'' emission measurement allowances through a comprehensive research, development, and demonstration program for the fully enforceable programs, i.e., beginning in the 2007 calendar year for gaseous emissions and the 2008 calendar year for PM.[3] The overall test program was designed to be completed in two phases. The first phase addressed gaseous emission accuracy margins and the second phase addressed PM emission accuracy margins. The program was to be managed by EPA, in close cooperation with CARB and the involved engine manufacturers.

The MOA also addressed the consequences of failing to complete the accuracy margin development work in time for the scheduled start of either the gaseous or PM enforceable programs. Two of these provisions are most relevant to today's rule. The first provision addresses short term delays in receiving the final accuracy margins. Specifically, for each month the accuracy margins are delayed beyond the agreed upon dates, then affected gaseous emissions or PM enforceable program, i.e., either gaseous emissions or PM, would be delayed by the same number of months up to three months. The second provision addresses delays in excess of three months. In particular, if the accuracy allowances were delayed beyond three months of the agreed upon dates, then the affected gaseous or PM enforceable program would be placed in abeyance for a year and the respective pilot program would be extended to include that year using the interim allowance(s).

Finally, the MOA acknowledged that if fundamental, irresolvable technical problems were identified relative to PM PEMS, the PM portion of the in-use testing program would be placed into abeyance until such time as suitable devices were identified and available, or the problems otherwise resolved.

V. Details of the Rule

This Direct Final Rule establishes new, final gaseous emission measurement margins that are required for the manufacturer-run, in-use test program for heavy-duty diesel vehicles and engines. This Direct Final Rule also makes several changes to the in-use test program in the early years of testing. First, it places the fully enforceable PM program, which would have begun in 2008, into abeyance for one year due to delays in the accuracy margin development program. In its place, the pilot program for PM will be extended into 2008. Second, it grants a request by EMA and its member companies to place the 2006 PM pilot program into abeyance to accommodate their concerns regarding the availability and efficacy of PM PEMS. Third, it provides engine manufacturers with additional time to conduct in-use testing and report the results to EPA because of delays in developing the requisite electronic reporting guidance, additional short-term delays in the PM accuracy margin development program, and to grant a request from some engine manufacturers to delay PM PEMS purchasing decisions until they could evaluate the initial results of the PM accuracy margin. That will allow them to make more refined purchasing decisions and to have the resulting PM PEMS include any instrumentation upgrades that may be forthcoming. Fourth, it grants a request from engine manufacturers for the flexibility to recruit and test separate vehicles for the 2007 and 2008 gaseous emissions and PM test programs, and to recruit test vehicles from their internal fleets and test them while being operated by company employees for the 2007 PM pilot program. This addresses the manufacturers' concerns that procuring and instrumenting test vehicles with PM PEMS could, in some instances, be more complex and time consuming than for gaseous emissions testing. Finally, this rulemaking removes references in the applicable regulations to the development of final accuracy margins for measuring gaseous emissions with portable systems because that program has been completed. Each of these changes is further described separately below.

A. Gaseous Emission Measurement Margins for Manufacturer-Run, In-Use Testing

1. Results of the Test Program Under the Memorandum of Agreement (MOA)

The MOA (described in section IV.) called for development of a comprehensive test plan for determining the final emission measurement accuracy margins for the manufacturer-run, in-use testing program. The test plan for the gaseous pollutants was subsequently agreed upon on May 20, 2005.[4] Generally, the detailed plan included a methodology that called for: (1) Comprehensive engine testing in the laboratory to assess the agreed upon sources of possible error and the resultant measurement variability between the PEMS and laboratory instrumentation and measurement methods; (2) the effects of environmental conditions on PEMS error and the variability in key engine parameters supplied by the engine's electronic controls to the PEMS; (3) the development of a statistically-based computer model to simulate effects of all sources of error on the final measurement accuracy margins; and (4) validation of the simulation model results and resulting accuracy margins against data generated through actual in-use field testing using simultaneous on-vehicle measurements from a mobile emissions laboratory (i.e., laboratory-grade instruments mounted inside a trailer) and a PEMS unit. This validation step is important because it provides confidence that the simulation model results reflect reasonable measurement allowances. If the two methods do not statistically agree, then there may be possible errors in the simulation model, the in-use mobile emissions testing results, or both.

The test plan also contained the statistically-based algorithms for calculating the data-driven margins for

[2] The interim additive accuracy margins for the pilot programs are: NMHC = 0.17 g/bhp-hr, NO_X = 0.50 g/bhp-hr, CO = 0.60 g/bhp-hr, and PM = 0.10 g/bhp-hr.

[3] See ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,'' dated May 2005. A copy of the memorandum is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

[4] See ''Test Plan to Determine PEMS Measurement Allowances for the Gaseous Emissions Regulated Under the Manufacturer-Run Heavy-Duty Diesel In-Use Testing Program,'' for the U.S. Environmental Protection Agency, California Air Resources Board, and Engine Manufacturers Association, dated May 20, 2005. A copy of the report is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

the gaseous pollutants in addition to three different brake-specific calculation methods for determining emission results (i.e., grams/bhp-hr) from in-use data. The first two of these methods (Methods 1 and 2 below) are described in 40 CFR 1065.650(a)(1) and (3). The third method has been suggested by the engine manufacturers and would require prior approval of the Administrator before it could be used as provided for in 40 CFR 1065.915(d)(5)(iv). The basic calculation is similar for each of the three methods and is shown generically in the following equation:

Brake-Specific Emissions = Mass of Pollutant/Work Performed

Where:

Mass of Pollutant = Exhaust Pollutant Concentration × Exhaust Flow Rate

The three methods differ primarily in how the exhaust flow rate or the work portion (i.e., brake horsepower-hours) of the calculation is determined. The methods are also more fully described in the test plan.

After the simulation modeling results for the three calculation methods were completed, the test plan called for the final set of accuracy margins (i.e., NMHC, CO, and NO_X) to be determined by the following generalized process. First, identify the maximum percentage measurement error associated with any of the three pollutants, i.e., without regard to the pollutant species, for each of the three calculation methods.[5] Second, from these three maximum values, select the method with the lowest or minimum value. Third, and finally, use the results from that method to determine the measurement accuracy margins for all of the pollutants.

The cooperative test program for gaseous pollutants as described in the MOA was completed and a final report issued.[6] [7] When the predicted results from the model simulations were compared to the mobile emissions laboratory results, only Method 1 could be validated for NMHC and NO_X. Methods 2 and 3 could only be validated for NMHC. None of the methods validated for CO. While unexpected, the lack of overall validation for the three methods is not necessarily surprising given the enormous amount of laboratory-based and on-vehicle testing, the number of possible errors and the model simulations (i.e., thousands of simulation runs), and complexity of the overall cooperative test program.

The emission test data, simulation model, and in-use validation data were investigated further to determine if there were any errors that could be remedied to resolve the validation problems. While this investigation identified some reasons for the lack of validation and potential additional work that might lead to fully validated results, none of additional work was judged to be possible under the schedule for determining the final set of gaseous emission accuracy allowances as required by the MOA.

In order to ensure that the fully enforceable program for gaseous emissions started on schedule and to provide an orderly transition for engines designed and produced during the early years of the program, the emission measurement accuracy margins from Method 1 were chosen for use in the fully enforceable program for 2007 through 2009 model year engine families regardless of the calendar year in which they may be selected for testing.[8] Therefore, the accuracy margins based on the completed test program only apply to the emission results calculated using Method 1 for these initial three model years.[9] The resultant emission measurement accuracy margins are: 0.02 for NMHC; 0.5 for CO; and 0.45 for NO_X.

At the time Method 1 was selected, it was anticipated that EPA would continue to develop validated results for the remaining methods, although it was unknown how long that work might take. It was also anticipated that if the work was successful, new accuracy margins could be established through rulemaking, although the above accuracy margins for Method 1 would be retained for 2007 through 2009 model year engine families, as described above.

2. Results of Additional Gaseous Measurement Margin Analysis

At the end of the cooperative test program that eventually led to using the accuracy margins for Method 1 testing for 2007 through 2009 model year engine families, EPA expressed its intent to continue work to develop more robust gaseous emission measurement accuracy margins, especially for NO_X, as originally anticipated in the test program plan. We envisioned this work would primarily focus on the reasons for the lack of validation and potential additional work that was identified at the end of the original test program, as previously discussed.

In our follow-on work we corrected an error in the previous test data, included additional valid engine test data that was not used in the original work, and eliminated or corrected some error biases or data outliers in the data set based on engineering judgment. A total of four different modified data sets or scenarios were constructed for combinations of the changes described above for each of the three calculation methods.[10] After rerunning the simulation model for the various combinations, we found that each of the four modifications validated for all three methods and all the gaseous pollutants. Furthermore, we found that the results from the various methods for each pollutant were numerically quite close to each other.

In order to select final accuracy margins from the validated results described above, we evaluated each of the modified data sets to identify the most appropriate and reasonable revision from an engineering science perspective (or based on good engineering practice). Based on this evaluation, we selected the modification scenario where some data from three test points (emission results at specific engine speed and load combinations) from one of the test engines were excluded from the data set. These data reflected atypically elevated levels of NO_X with large and inconsistent measurement errors. The other modification scenarios, while justifiable, were judged to represent somewhat more extreme or difficult to

[5] The percentage error for each pollutant and calculation method was found by dividing the associated numerical result from the simulation model by an NTE limit. EPA determined the NTE limit by multiplying an assumed in-use emission rate from future heavy-duty diesel engines in the 2010 model year timeframe by the multiplier that is used to calculate the NTE standard. In this case the multiplier is 1.5. See 40 CFR 86.007–11(a)(4) for more information on the NTE multiplier.

[6] See ''Gaseous Emission Measurement Accuracy Margins for Portable Emission Measurement Systems Used in the Heavy-Duty Diesel Engine In-Use Testing Program: Revised Final Report,'' U.S. Environmental Protection Agency, February 2008, EPA report number: EPA420–R–08–005. A copy of the report is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

[7] The estimated cost of the gaseous emission measurement accuracy margin test program is $2.2 million.

[8] Method 1 was chosen because it was the only method that was validated for the two most environmentally important pollutants from heavy-duty diesel truck engines, i.e., NMHC and NO_X.

[9] The test program results led to no accuracy allowances for either of the other two calculation methods from 2007 through 2009 model year engine families.

[10] See ''Additional Analyses of the Monte Carlo Model Developed for the Determination of PEMS Measurement Allowances for Gaseous Emissions Regulated Under the Heavy-Duty Diesel Engine In-Use Testing Program,'' August 2007, EPA report number: EPA420–R–07–010. A copy of the report is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

defend manipulations of the data on a relative basis.

After selecting the most appropriate modified data set, we determined the final accuracy margins by applying the ''minimum of the maximums'' selection criteria from the original test plan to the three calculation methods. This showed that the largest percentage errors were associated with NO_X and that Method 2 had the lowest error for that pollutant of the three methods.[11] Therefore, pursuant to the results of the original test plan, the subsequent validation work performed by EPA, and after discussions with the other parties to the MOA, we are promulgating the final emission measurement accuracy margins shown in Table 1 for all the calculation methodologies beginning with 2010 model year engine families. Also as shown in the table, we are adopting these same numerical values for Methods 2 and 3 for 2007 through 2009 model year engines, at the discretion of the engine manufacturers, in order to provide a full compliment of calculation methods and accuracy margins for those engines.

TABLE 1.—FINAL MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins (g/bhp-hr)		
	2007–2009 model year engines		2010 and later model year engines
	Method 1 only	Methods 2 and 3	All methods
NMHC	0.02	0.01	0.01
CO	0.5	0.25	0.25
NO_X	0.45	0.15	0.15

B. NMHC Plus NO_X In-Use Testing Accuracy Margins

The June 2005 final rule that implemented the in-use testing program addressed accuracy margins for each of the gaseous pollutants and their associated individual standards, i.e., NMHC, CO, and NO_X. The MOA and subsequent gaseous emissions test program also focused on identifying the final accuracy margins for these individual pollutants. In developing the original rule and subsequent test program, however, we failed to recognize that 2004 through 2006 model year diesel engine families may be certified to a combined NO_X plus NMHC standard under § 86.004–11(a)(1) of the applicable regulations. Furthermore, under the ''phase-in options'' of § 86.007–11(g)(1) an engine manufacturer may optionally certify some of its production in model years 2007 through 2009 to the combined NO_X plus NMHC standard for 2006 model year engines under § 86.2004–11, rather than the otherwise applicable individual NO_X and NMHC standards. Therefore, we are correcting this oversight by promulgating in-use testing accuracy margins for 2004–2009 model year engines that may be certified to the combined NO_X plus NMHC standard.

The methodology for determining an accuracy margin for the combined NO_X plus NMHC emission standard is the same as that used to determine the numerical value of the combined standard itself. Specifically, the individual NO_X and NMHC accuracy margins are simply added together to provide a single value. Therefore, for 2004–2007 model year engines that may be tested under the gaseous emission pilot program for the 2006 and 2007 calendar years, the combined accuracy margin is the sum of the individual NO_X and NMHC values already contained in § 86.1912, or 0.67 g/bhp-hr. For engines tested in the enforceable program that begins in the 2007 calendar year and applies to 2007 and later model year diesel engines, the combined NO_X plus NMHC accuracy margins, using the individual values from Table 1, are shown in Table 2.

TABLE 2.—FINAL COMBINED NO_X PLUS NMHC MEASUREMENT ACCURACY MARGINS FOR THE ENFORCEABLE GASEOUS EMISSIONS IN-USE TESTING PROGRAM

Pollutant	Accuracy margins for 2007–2009 model year engines (g/bhp-hr)	
	Method 1 only	Methods 2 and 3
NO_X + NMHC	0.47	0.16

C. Delaying the Enforceable PM Program From 2008 to 2009

The MOA described in section IV. acknowledged that in order to promulgate new measurement accuracy margins with adequate lead time to begin the 2008 enforceable PM program, certain key milestone dates in the test program had to be achieved. For example, all the parties agreed that the final accuracy margins and documentation were needed by November 1, 2007. That meant the final test plan would have to be agreed upon by September 2006, given the time needed to complete the testing and analysis. Contingencies for missing the final delivery date were specified in the MOA and in the June 2005 final rulemaking.[12] Most relevant to this action was that if the final values and

[11] ''Selection of Final Gaseous Emission Measurement Accuracy Margins for Portable Emission Measurement Systems,'' memorandum from Richard S. Wilcox, U.S. Environmental Protection Agency, to Docket No. EPA–HQ–OAR–2004–0072, dated November 4, 2007. A copy of the document is available in the public docket for this rule.

[12] See 40 CFR 86.1935.

documentation were delayed more than three months from November 1, 2007, then the PM pilot program would continue for calendar year 2008 in place of the fully enforceable program for that year.

Completing the PM test program on schedule required that the initial work be conducted in parallel with the ongoing gaseous emission test program using the same contractors and personnel from EPA, CARB, and the engine manufacturers. Due to unexpected issues in the gaseous emission test program and the lack of other resources, all work on the PM test plan and subsequent test program had to be postponed. The end result of this postponement is that the final accuracy margin for PM will be delayed by approximately one year. Accordingly, the MOA and in-use test program regulations require that the first year of the previously adopted enforceable program (calendar year 2008) be placed into abeyance and the PM pilot program continued for that year. Hence, the enforceable PM program will now begin in 2009 calendar year.

In isolation, delaying the start of the enforceable PM program by one year and continuing the PM pilot program for that year would result in a three-year pilot, i.e., 2006 through 2008, as described above. However, as explained in the next section, we also believe it is appropriate to eliminate the first year of the original two-year pilot program. As a result, a two-year PM pilot will still occur as originally envisioned beginning with the 2007 calendar year.

D. Suspending the 2006 PM Pilot Program

The in-use testing program, as originally adopted in June 2005, included a two-year pilot (i.e., demonstration) program for PM emissions in calendar years 2006 and 2007. In establishing this requirement, EPA noted that the onboard measurement of PM emissions was significantly more challenging than for gaseous emissions, and that further development of the requisite portable measurement systems would be needed. We also stated that our technical assessment indicated that these systems would be available in time to start the in-use testing program. More specifically with regard to the PM pilot program, we noted our expectation that engine manufacturers would use ''best available'' prototype systems that were capable of measuring these emissions as required. Nonetheless, in recognition of the then remaining technical uncertainties, we added a provision to the regulations that would suspend the in-use test program as it applied to PM measurement if we discovered fundamental technical problems with portable in-use PM measurement systems that could not be resolvable in a reasonable time.

In a letter dated January 4, 2007, EMA requested that the first year of the two-year PM pilot program be held in abeyance.[13] The principle reasons were summarized as follows: (1) Suitable portable measurement systems are not commercially available; (2) fundamental technical issues remain to be resolved; (3) the joint program to develop a data-driven PM accuracy margin for these devices has been delayed at least one year; and (4) the final in-use testing regulation and the MOA require the one-year delay. The third issue relates to the delay of the first year of the fully enforceable PM test program from 2008 until 2009 as discussed in the previous section. The last issue relates to regulatory requirement to delay the PM measurement program if fundamental technical problems were discovered as described in the preceding paragraph.

Focusing on the first two points, we reminded EMA at the time that although some parties may interpret the term ''commercially available'' differently, the original rulemaking clearly stated the expectation that prototype portable measurement systems would be used in the PM pilot program if they could accurately and reliably measure PM emissions. This was acceptable because the pilot is designed for the engine manufacturers and EPA to gain experience in implementing the in-use testing program and using the portable measurement systems. Also, we noted that both EPA and some engine manufacturers had already purchased prototype portable PM measurement systems meeting these requirements. Finally, we described how we had successfully used the same prototype system to measure PM emissions over NTE events while traveling cross-country in a particulate trap-equipped truck using ultra-low sulfur diesel fuel.[14] Therefore, we concluded that acceptable measurement systems were available and no fundamental, irresolvable issues had been identified that would justify a delay in the pilot program. Nonetheless, we invited EMA to further elaborate on their technical concerns with the currently available measurement systems.

In a subsequent letter dated April 11, 2007, EMA more specifically detailed its technical concerns with currently available portable PM measurement systems.[15] Specifically, EMA listed fourteen technical considerations. These generally can be summarized as follows: (1) The devices had not been demonstrated as meeting the technical requirements of EPA's 40 CFR 1065; (2) the engine manufacturers' have no current experience with the measurement device because the current version is relatively new, the instrument manufacturer does not offer all the accessories needed to install and operate the system; (3) mounting the units on some trucks presents installation issues; (4) the sampling technology will not work properly with dirtier pre-2007 engines; (5) no training from the instrument manufacturer was available; and (6) a number of issues with accuracy and repeatability remain to be resolved. They also argued that it would be better to take the time now to focus on developing better portable PM measurement devices and, thereby, helping to ensure a successful launch of the fully enforceable program in 2009, especially since we would still have a full two years of the PM pilot program as originally called for by the regulations.

After carefully considering EMA's more explicit concerns, we concluded that: (1) A number of the issues were only relevant to the future fully enforceable program, not the pilot demonstration program; (2) EPA and EMA could work to resolve some issues such as only testing existing or prototype lower emitting buses or trucks; and (3) the remaining items simply did not by themselves reach a level that would justify delaying the pilot program. At the same time, we agreed with EMA that it is more important to continue to work cooperatively for a successful launch of the enforceable PM in-use testing program, especially since we will still have a two-year pilot. Therefore, at that point in time, we decided it was in the best interests of all parties to eliminate the 2006 calendar year pilot program and focus our collective efforts to improve the current portable PM measurement systems and conduct the cooperative research and development program for this pollutant.

[13] See letter from Timothy A. French, Engine Manufacturers Association, to Khesha Jennings, U.S. Environmental Protection Agency, dated January 4, 2007. A copy of the letter is available in the public docket for this rule.

[14] ''Road Test of an On-board Particulate Matter Mass Measurement System,'' D. R. Booker, Sensors, Inc., R. A. Giannelli and J. Hu, U.S. Environmental Protection Agency, March 2007, SAE paper number 2007–01–1116.

[15] See letter from Timothy A. French, Engine Manufacturers Association, to Khesha Jennings, U.S. Environmental Protection Agency, dated April 11, 2007. A copy of the letter is available in the public docket for this rule.

E. Revised Schedules and Testing Flexibilities for the 2005 Through 2009 In-Use Test Programs

The June 2005 final rule that established the heavy-duty in-use test program stated that EPA would typically select engine families for testing in June of each calendar year. Further, the regulations allowed 18 months from the time engine families were designated for engine manufacturers to complete all testing and report the results to EPA. Subsequent to the final rule, we found that certain adjustments to the test schedules were necessary in the early years of the program for the reasons given below. The adjustments for engine family designation and reporting dates are summarized in Table 3.

TABLE 3.—REVISED ENGINE FAMILY DESIGNATION AND REPORTING SCHEDULES

Program	Designate families		Report due	
	Original	Revised	Original	Revised
2005 Gaseous Pilot*	06/2005	Unchanged	11/2006	11/2007.
2006 Gaseous Pilot	06/2006	12/2006	11/2007	11/2008.
2007 Gaseous Enforceable	06/2007	12/2007	11/2008	11/2009.
2007 PM Pilot	06/2007	12/2007	11/2008	05/2010.
2008 Gaseous Enforceable	06/2008	09/2008	11/2009	03/2010.
2008 PM Pilot	06/2008	09/2008	11/2009	09/2010.
2009 Gaseous Enforceable	06/2009	Unchanged	11/2010	04/2011.
2009 PM Enforceable	06/2009	Unchanged	11/2010	04/2011.
2010 Gaseous Enforceable**	06/2010	Unchanged	11/2011	Unchanged.
2010 PM Enforceable**	06/2010	Unchanged	11/2011	Unchanged.

*The 2005 Gaseous Pilot Program has been completed.
**For illustration only. The 2010 program dates are as originally promulgated.

When the final rule was promulgated, EPA was working with ARB and the engine manufacturers to create a standardized, electronic reporting format which precisely specified each of the numerous reporting data elements and enabled the test results from the portable emission measurement systems to be reported into EPA's computerized database. We had envisioned that this work would be completed in a timely manner so that the 2005 gaseous emissions pilot program could be conducted as scheduled. However, despite the diligent work of all parties, creating the electronic reporting guidance for this all new test program proved more complex and time consuming than expected. By September 2005 it became obvious that the lack of the reporting guidance document had become an impediment to efficiently conducting the in-use test program. As a result, EPA agreed with the engine manufacturers, and ARB concurred, that the start of the 18-month reporting period should be delayed until a reporting guidance document was issued.[16]

In late May 2006 the reporting guidance was released and the 18-month reporting period began in June of that year and ended in November 2007.[17] To accommodate this delay without unduly compressing or overlapping the testing in subsequent years, we are delaying engine family designations, and sometimes extending the reporting period, for the 2006 through 2008 gaseous emissions testing programs. Specifically as shown in Table 3, we are delaying engine family designations for 2006 until December of that year and extending the reporting period to 24 months. For 2007, we are similarly delaying engine family designations and extending the reporting period. Further, we are shortening the delay in selecting engine families for the 2008 gaseous emissions enforceable program to four months, i.e., September of that year, and subsequently returning to the normal 18-month reporting period. Finally, we are aligning the engine family designation dates for the 2007 and 2008 PM pilot programs with the revised gaseous emissions program dates to keep the program start dates the same.

We have more recently reevaluated the schedules for the in-use PM test program. Our reassessment was based on the progress that is being made to develop ''data driven'' emission measurement allowances as part of the comprehensive research, development, and demonstration program outlined in the MOA,[18] as previously described in section IV. The reassessment was also made in the context that successfully measuring PM emissions onboard a vehicle and deploying this technology in revenue service represents the fundamental next step in emission measurement technology and environmental protection. On balance, we have concluded that additional time and added flexibility in the early years of the in-use PM test program is required now to help ensure that this important programmatic advancement is successful.

More specifically, last summer EPA and the other contributors to the PM accuracy margin development program decided to do some pre-testing of a PM PEMS prior to initiating the full test program in order to further demonstrate and refine the test protocol and instrumentation. This led to some technical changes to the PM PEMS themselves. It also caused the full accuracy margin development program to be delayed. At nearly the same time, some engine manufacturers stated that they would like to use the initial results from the full test program on the various PM PEMS devices in order to make more refined purchasing decisions and to include any resulting upgrades to the instruments. Given the importance of the program and expense involved, we believe it is reasonable to accommodate the delay in initiating the full PM accuracy margin development program and to allow manufacturers to use the initial test results for purchasing decisions. Therefore, as shown in Table 3, we are adding a total of six months to the testing period to the 2007 PM pilot program. As with the gaseous emissions program described above, we are also extending the PM reporting

[16] See letter from Merrylin Zaw-Mon, U.S. Environmental Protection Agency, to John Duerr, Detroit Diesel Corporation, dated November 15, 2005. A copy of the letter is available in the public docket for this rule.

[17] All manufacturers successfully reported the 2005 gaseous emission test results according to that modified schedule.

[18] See ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,'' dated May 2005. A copy of the memorandum is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

periods for the 2008 pilot and the 2009 enforceable PM programs to avoid compression effects. Further, we are extending the reporting period for the 2009 enforceable gaseous emissions program to match the revised period for the 2009 enforceable PM program to couple and realign the programs as originally intended. Finally, we want to make it clear that any month-to-month delay (up to three months) in initiating the 2009 enforceable PM program, as outlined in the accuracy margin development MOA [19] and described in section IV, will have no effect on the reporting dates described above, i.e., no additional time.

Most recently engine manufacturers have expressed concerns that procuring and instrumenting test vehicles with PM PEMS could, in some instances, be more complex and time consuming than for gaseous emissions testing. For example, they claim that mounting the instruments and running sampling lines with current generation PM PEMS might require drilling holes in a truck's cab or creating special mounting hardware. In such cases, the manufacturers argue that it might be difficult to obtain vehicles from independent owners as required by the current regulations. Engine manufacturers have requested that they be given the flexibility to recruit and test vehicles from their captive fleets for the 2007 PM pilot program based on these concerns. In considering the engine manufacturers appeal, we note that the gaseous emissions enforceable and PM pilot programs for that year would have to be ''decoupled'' so that the gaseous emissions program would continue to be conducted according to the applicable testing protocols, e.g., obtaining vehicles from independent owners and testing them in normal revenue service.

While we are not convinced that current PM PEMS will cause these unique challenges, we also can not conclusively rule out some instrumentation and recruiting issues in the early part of the PM program. Again, given the importance of successfully launching this program, EPA is granting the engine manufacturers' request to modify the PM pilot program test protocols. Therefore, we are allowing manufacturers to recruit vehicles from their captive fleet and to test them while being driven by a company employee. However, manufacturers must ensure that the vehicles are screened, prepared, operated, and tested in accordance with all other applicable requirements. Furthermore, the vehicle must be tested by being driven on a route that reasonably replicates normal, in-use revenue service for that type of vehicle. The requirements for the enforceable gaseous emissions test program for 2007 and 2008 are unchanged.

[19] See ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,'' dated May 2005. A copy of the memorandum is available in the public docket for this rule and at the EPA/OTAQ Web site (*http://www.epa.gov/otaq/hd-hwy.htm*).

F. Removing the Gaseous Accuracy Test Program From the Regulations

We are taking this opportunity to delete the references in § 86.1935 that pertain to the final report for gaseous emission accuracy margins and the consequences that would ensue if the report was delayed beyond certain dates. These provisions are no longer needed because accuracy margins for gaseous pollutants are being promulgated in this Direct Final Rule. The revised section, therefore, appropriately focuses on the ongoing development of accuracy margins for PM emissions.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This Direct Final Rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the in-use testing implementation dates for the fully enforceable PM test program as either envisioned or allowed for in the original final rule. This rule also grants a request from the affected engine manufacturers for a one year delay in the start of the pilot testing program for PM. Further, there are no costs associated with this rule beyond those envisioned in the original rule.

B. Paperwork Reduction Act

This direct final rule does not include any new collection requirements, as it acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Therefore, there are no new paperwork requirements associated with this rule.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards at 13 CFR 121.201; (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 final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This direct final rule acts to replace interim gaseous emission measurement

accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. We have, therefore, concluded that today's final rule will relieve regulatory burden for all small entities and will not have a significant economic impact on a substantial number of small entities.

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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory 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 EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This direct final rule acts to replace interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. The requirements of UMRA, therefore, do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA 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'' are 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, EPA 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 EPA consults with State and local officials early in the process of developing the regulation. EPA 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 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, EPA 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 direct final rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

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

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (59 FR 22951, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely replaces interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency 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 the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final rule merely replaces the interim gaseous emission measurement accuracy allowances for portable emission measurement systems with final values and delays the implementation schedule for the in-use PM testing program.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule is effective on May 12, 2008.

L. Statutory Authority

The statutory authority for this action comes from 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 86

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

Dated: February 28, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I 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 86.1905 is amended by revising paragraph (c)(2) to read as follows:

§ 86.1905 How does this program work?

* * * * *

(c) * * *

(2) 2009 for PM testing.

* * * * *

■ 3. Section 86.1912 is amended by adding new paragraphs (a)(3)(v) and (a)(5) and revising paragraph (a)(4) to read as follows:

§ 86.1912 How do I determine whether an engine meets the vehicle-pass criteria?

* * * * *

(a) * * *

(3) * * *

(v) NO_X + NMHC: 0.67 grams per brake horsepower-hour.

(4) Accuracy margins for portable in-use equipment when testing is not performed under the special provisions of § 86.1930 for 2007 through 2009 model year engine families that are selected for testing in any calendar year as follows:

(i) NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.02 grams per brake horsepower-hour.

(ii) NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.01 grams per brake horsepower-hour.

(iii) NMHC using an alternative emission calculation method as

approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.01 grams per brake horsepower-hour.

(iv) CO using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.5 grams per brake horsepower-hour.

(v) CO using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.25 grams per brake horsepower-hour.

(vi) CO using an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.25 grams per brake horsepower-hour.

(vii) NO_X using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.45 grams per brake horsepower-hour.

(viii) NO_X using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.15 grams per brake horsepower-hour.

(ix) NO_X using an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.15 grams per brake horsepower-hour.

(x) NO_X + NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(1): 0.47 grams per brake horsepower-hour.

(xi) NO_X + NMHC using the emission calculation method specified in 40 CFR 1065.650(a)(3): 0.16 grams per brake horsepower-hour.

(xii) NO_X + NMHC using an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.16 grams per brake horsepower-hour.

(xiii) PM: To be determined by rulemaking as indicated in § 86.1935.

(5) Accuracy margins for portable in-use equipment when testing is not performed under the special provisions of § 86.1930 for 2010 or later model year engines families that are selected for testing in any calendar year as follows:

(i) NMHC using any emission calculation method specified in 40 CFR 1065.650(a) or an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.01 grams per brake horsepower-hour.

(ii) CO using any emission calculation method specified in 40 CFR 1065.650(a) or an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.25 grams per brake horsepower-hour.

(iii) NO_X using any emission calculation method specified in 40 CFR 1065.650(a) or an alternative emission calculation method as approved by the Administrator under 40 CFR 1065.915(d)(5)(iv): 0.15 grams per brake horsepower-hour.

(iv) PM: To be determined by rulemaking as indicated in § 86.1935.

* * * * *

■ 4. Section 86.1930 is amended as follows:

■ a. By revising the section heading.

■ b. By redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6).

■ c. By redesignating the introductory text as paragraph (a) introductory text.

■ d. By revising newly designated paragraph (a) introductory text.

■ e. By redesignating newly designated paragraphs (a)(4)(1) and (2) as paragraphs (a)(4)(i) and (ii).

■ f. By adding new paragraphs (a)(7) and (b).

§ 86.1930 What special provisions apply from 2005 through 2009?

(a) We may direct you to test engines under this subpart for emissions other than PM in 2005 and 2006, and for PM emissions in 2007 and 2008. In those interim periods, all the provisions of this subpart apply, with the following exceptions:

* * * * *

(7) You must complete all the required testing and reporting under this subpart by the following dates:

(i) November 30, 2007 for engine families that we designate for non-PM testing in 2005.

(ii) November 30, 2008 for engine families that we designate for non-PM testing in 2006.

(iii) May 31, 2010 for engine families that we designate for PM testing in 2007.

(iv) September 30, 2010 for engine families we designate for PM testing in 2008.

(b) For 2007 through 2009 all the provisions of this subpart and paragraph (a) of this section apply, with the following additional exceptions:

(1) You must complete all the required testing and reporting under this subpart by the following dates:

(i) November 30, 2009 for engine families that we designate for non-PM testing in 2007.

(ii) March 31, 2010 for engine families that we designate for non-PM testing in 2008.

(iii) April 30, 2011 for engine families that we designate for non-PM and PM testing in 2009.

(2) You may conduct non-PM and PM testing on different vehicles for engine families that we designate in 2007 and 2008.

(3) You may conduct PM testing as follows for 2007:

(i) Test vehicles may be selected from a vehicle fleet that you own or otherwise directly control.

(ii) Test vehicles may be operated by a driver that you employ.

(iii) Each test vehicle must be operated on a route and under operating conditions that reasonably replicate the use of the selected vehicle type when operated in typical revenue service, unless otherwise approved by us.

■ 5. Section 86.1935 is revised to read as follows:

§ 86.1935 What special provisions may apply as a consequence of a delay in the particulate matter accuracy margin report for portable emission measurement systems?

(a) A memorandum entitled, ''Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing'' describes a test program for establishing measurement accuracy margins related to testing under § 86.1912(a)(4) which will be used for testing under this subpart. This document is available at *http://www.epa.gov/otaq/hd-hwy.htm* or at the mailing address specified in § 86.1905(g).

(b) If there is a delay in receiving the written final report for PM emissions described in the agreement referenced in paragraph (a) of this section, and that delay is not attributable to engine manufacturers failing to meet their commitments under that agreement, the following provisions apply:

(1) If the delay is 3 months or less, we will delay the designation of engine families for testing in the applicable calendar year, as described in § 86.1905(d), by the same number of additional whole months (rounded up) needed to complete the report.

(2) If the delay is more than 3 months but less than 12 months, we may continue to designate engine families for testing under the special provisions described in § 86.1930 for an additional year.

(3) If the delay is longer than 12 months, the following approach is established for the applicable calendar year:

(i) If the delay is longer than 12 months but less than 15 months, we will follow the steps described in paragraph (b)(1) of this section.

(ii) If the delay is longer than 15 months, but, less than 24 months, we will follow the steps described in paragraph (b)(2) of this section, for the applicable calendar year.

(iii) If the delay is longer than 24 months, the emission testing program will go into abeyance.

(c) If one or more engine manufacturers fail to meet commitments under the agreement described in paragraph (a) of this section and such a failure results in a delay in the final written report for PM emissions described in the agreement, the following provisions apply:

(1) If the delay is 3 months or less, we will delay the designation of engine families for testing in the applicable calendar year, as described in § 86.1905(d), by the same number of additional whole months (rounded up) needed to complete the report.

(2) If the delay is more than 3 months but less than 12 months, the provisions of this subpart will not apply for the otherwise applicable calendar year, subject to the following provisions:

(i) We may identify the number of engine families that would otherwise have been designated for testing in that calendar year for the delayed pollutant type and direct manufacturers to test that number of engine families under the special provisions described in § 86.1930 and additionally in any later calendar year once the provisions of this subpart begin for that pollutant type, without counting those accumulated engine families toward the allowable annual cap on the number of engine families specified in § 86.1905.

(ii) The normal 18-month period for testing and reporting results specified in § 86.1905(d) is extended to 24 months for any accumulated engine-family designation described in paragraph (c)(2)(i) of this section. The additional time extensions for testing and reporting results as specified in § 86.1905(d) also apply.

(3) If the delay is longer than 12 months, the following approach is established for the applicable calendar year.

(i) If the delay is longer than 12 months but less than 15 months, we will follow the steps described in paragraph (c)(1) of this section.

(ii) If the delay is longer than 15 months, but less than 24 months, we will follow the steps described in paragraph (c)(2) of this section for the applicable calendar year.

(iii) If the delay is longer than 24 months, we will continue to follow the steps described in paragraphs (c)(1) and (c)(2) of this section, including the accumulation of engine families for testing until the report is received and the fully implemented program commences.

(d) We may determine that any individual manufacturer's failure under paragraph (c) of this section constitutes a failure by all engine manufacturers.

(e) Nothing in this section affects our ability to select engines from any model year beginning with model year 2007, or for gaseous emission testing.

(f) If we determine that fundamental technical problems with portable in-use PM measurement systems are not resolvable in a reasonable time, the provisions of this subpart, as they apply to PM, will go into abeyance until we determine that suitable emission-measurement devices are available for in-use testing.

(g) Engine manufacturers contributing to the test programs described in the agreement referenced in paragraph (a) of this section may limit their testing under the special provisions described in § 86.1930 to five engines in each selected engine family.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 00–168, 00–44; FCC 07–205]

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a standardized form for the quarterly reporting of programming aired in response to issues facing a television station's community and a requirement that portions of each television station's public inspection file be placed on the Internet. The Commission solicited and reviewed comments regarding whether the current requirements pertaining to television stations' public inspection files were sufficient to ensure that the public has adequate access to information on how the stations are serving their communities.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). After OMB approval is received, the Commission will publish a document in the **Federal Register** announcing the effective date of the rules.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 07–205, adopted on November 27, 2007, and released on January 24, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

Initial Paperwork Reduction Act of 1995 Analysis

This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish separate documents in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the Report and Order

I. Introduction

1. We commenced this proceeding to determine whether our current requirements pertaining to television