

by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (59 FR 22951, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely proposes to approve changes to state law implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: December 12, 2006.

**Jane Diamond,**

*Acting Regional Administrator, Region 9.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 80 and 86

[EPA-HQ-OAR-2006-0363; FRL-8263-5]

RIN 2060-AN66

#### Amendment to Tier 2 Vehicle Emission Standards and Gasoline Sulfur Requirements: Partial Exemption for U.S. Pacific Island Territories

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

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is proposing to exempt the three U.S. Pacific Island Territories—American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The Governor of American Samoa petitioned us for an exemption from the Tier 2 gasoline sulfur requirement because of the potential for gasoline shortages, the added cost, and the minimal air quality benefits the Tier 2 gasoline sulfur requirement would provide to American Samoa. Representatives of the Governors of Guam and C.N.M.I. have also requested an exemption referencing the petition submitted by American Samoa. The Far East market, primarily Singapore, supplies gasoline to the U.S. Pacific Island Territories. The Tier 2 sulfur standard effectively requires special gasoline shipments, which would increase the cost and could jeopardize the security of the gasoline supply to the Pacific Island Territories. The air quality in American Samoa, Guam, and C.N.M.I. is generally pristine, due to the wet climate, strong prevailing winds, and considerable distance from any pollution sources. We recognize that exempting the U.S. Pacific Island Territories from the gasoline sulfur standard will result in smaller emission reductions. However, Tier 2 vehicles

using higher sulfur gasoline still emit 30% less hydrocarbons and 60% less NO<sub>x</sub> than Tier 1 vehicles and negative effects on the catalytic converter due to the higher sulfur levels are, in many cases, reversible. Additionally, these reduced benefits are acceptable due to the pristine air quality, the fact that gasoline quality will not change, and the cost and difficulty of consistently acquiring Tier 2 compliant gasoline. The Tier 2 motor vehicle rule also sets standards for vehicle emissions. Vehicles in use on the U.S. Pacific Island Territories will not be exempt from the Tier 2 vehicle emission standards. However, additional flexibility will be afforded due to the lack of low sulfur gasoline.

**DATES:** Comments must be received on or before January 29, 2007. Request for a public hearing must be received by January 12, 2007. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0363, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0363. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0363. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 <http://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.

*Docket:* All documents in the docket are listed in the <http://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 <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., 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.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to <http://www.regulations.gov> are not affected by the flooding and will remain the same.

**FOR FURTHER INFORMATION CONTACT:** Sean Hillson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode AASMCG, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4789; fax number: (734) 214-4052; e-mail address: [Hillson.Sean@epa.gov](mailto:Hillson.Sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the "Rules and Regulations" section of today's **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. For further information, please see the information provided in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we

receive adverse comment on the rule, or on one or more distinct actions in the rule, we will withdraw the direct final rule, or the portions of the rule receiving adverse comment. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The contents of this preamble are listed in the following outline:

- I. General Information
- II. Summary of Rule
- III. Statutory and Executive Order Reviews
- IV. Statutory Provisions and Legal Authority

**I. General Information**

*A. Does this Action Apply to Me?*

This action will affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels for use in the U.S. Pacific Island Territories—American Samoa, Guam, and Commonwealth of the Northern Mariana Islands (C.N.M.I.). It will also affect you if you produce, import, distribute, or sell gasoline fuel for use in the U.S. Pacific Island Territories. The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Examples of potentially regulated entities	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>
Motor Vehicle Manufacturers .....	336111 336112 336120	3711
Alternative Fuel Vehicle Converters .....	336311 336312 422720 454312 811198 541514 541690	3592 3714 5172 5984 7549 8742 8931
Commercial Importers of Vehicles and Vehicle Components .....	811112 811198 541514	7533 7549 8742
Petroleum Refiners .....	324110	2911
Gasoline Marketers and Distributors .....	422710 422720	5171 5172
Gasoline Carriers .....	484220 484230	4212 4213

<sup>a</sup> North American Industry Classification System (NAICS).  
<sup>b</sup> Standard Industrial Classification (SIC).

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

#### 1. Submitting CBI

Do not submit confidential business information to EPA through <http://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.

#### 2. 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.

### II. Summary of Rule

This proposed rule would exempt American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (C.N.M.I.) from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The proposed rule would not exempt American Samoa, Guam, and C.N.M.I. from the Tier 2 vehicle emission standards. However, we are providing additional flexibilities for

Tier 2 vehicles considering low sulfur gasoline is unavailable in the territories. These flexibilities (1) allow additional preconditioning prior to conducting exhaust emission tests (to remove sulfur deposits on the catalyst and emission control system components) and (2) allow special OBD system considerations to account for higher levels of sulfur present in gasoline. Exempting these U.S. Pacific Island Territories from the gasoline sulfur standard and providing flexibilities to the vehicle regulations for Tier 2 vehicles located in the U.S. Pacific Island Territories would have minimal, if any, impact on air quality.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the “Rules and Regulations” section of today’s **Federal Register**. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

### III. 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 OMB review.

#### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not create new requirements. Its purpose is to relieve a burden imposed on the three Pacific Island Territories.

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 Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any 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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations 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 rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule would exempt the three U.S. Pacific Island Territories—American Samoa, Guam and the Commonwealth of the Northern Mariana Islands—from the Tier 2 rule for gasoline sulfur requirements and extend existing related flexibilities to the vehicle emission standards for the three territories. It does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories. We have therefore concluded that today’s rule will relieve regulatory burden for all affected small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 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 why that alternative was not 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.

Today’s rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. It does not create new requirements. Its purpose is to relieve a burden imposed on the three Pacific Island Territories.

#### *E. 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” 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.”

This final 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. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the U.S. Pacific Island Territories in developing this rule. A summary of the concerns was raised during that consultation and EPA’s response to those concerns is provided in previous sections of this preamble.

#### *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 9, 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. This rule would exempt the three Pacific Island Territories—American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the Tier 2 rule for gasoline sulfur requirements and extend existing related flexibilities to the vehicle emission standards for the three territories. It applies only to the three U.S. Pacific Island Territories. 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, the Agency must 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.

EPA interprets Executive Order 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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate 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”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so 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) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### **IV. Statutory Provisions and Legal Authority**

Statutory authority for today’s final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 325, 211 and 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

**List of Subjects**

*40 CFR Part 80*

Environmental protection,  
Administrative practice and procedure,  
Gasoline, Reporting and recordkeeping  
requirements.

*40 CFR Part 86*

Environmental protection,  
Administrative practice and procedure,  
Motor vehicle pollution.

Dated: December 21, 2006.

**Stephen L. Johnson,**  
*Administrator.*

[FR Doc. E6-22309 Filed 12-27-06; 8:45 am]

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