deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: May 14, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7–10059 Filed 5–23–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 601

[EPA–HQ–OAR–2005–0173; FRL–8317–2]

RIN 2060–AN68

SAFETEA–LU High Occupancy Vehicle Facilities Exemption Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act, which was signed into law on August 10, 2005, contains provisions which apply to state High Occupancy Vehicle (HOV) facilities. Among other exceptions, SAFETEA–LU Section 1121, which is codified at 23 United States Code (U.S.C.) 166 now allows an exemption from the HOV facility occupancy requirement for vehicles certified as ''low emission and energy-efficient.'' As directed by the 2005 Transportation Act, EPA must issue regulations for certifying vehicles as ''low emission and energy-efficient.'' Specifically, this action proposes the requirements for ''low emission and energy-efficient'', including procedures for making fuel economy comparisons and the requirements for labeling these vehicles. As the Department of Transportation (DOT) is responsible for the planning and implementation of HOV programs, any changes to HOV programs as a result of this action would also be implemented by DOT and enforced by the individual states that choose to adopt these requirements. As directed by the 2005 Transportation Act, the HOV multiple-occupancy exemption for low emission and energy-efficient vehicle expires September 30, 2009.

DATES: Comments on this Notice of Proposed Rulemaking must be submitted on or before July 9, 2007. A public hearing will be held on June 8, 2007. Requests to present oral testimony must be received on or before June 1, 2007. If EPA receives no requests to present oral testimony by this date, the hearing will be canceled.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0173, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: pugliese.holly@epa.gov.*
- *Fax:* 734–214–4053.
- *Mail:* EPA–OAR–2005–0173, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105
- *Hand Delivery:* Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., 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–2005–0173. 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. EPA recommends that you include your name and other contact information in the body of your comment if you submit an electronic comment or 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 *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 Docket, EPA/DC, EPA West, Room 3334, 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.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: 734–214–4288; fax number: 734–214–4053; e-mail address: *pugliese.holly@epa.gov.*

Access to Rulemaking Documents Through the Internet: This action is available electronically on the date of publication from EPA's **Federal Register** Web site listed below. Electronic versions of this preamble, regulatory language, and other documents associated with this proposal rule are available from the EPA Office of Transportation and Air Quality Web site, listed below, shortly after the rule is signed by the Administrator. These services are free of charge, except any cost that you already incur for connecting to the Internet. EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site: *http://www.epa.gov/otaq/* (look in What's New or under specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into

which the documents may be downloaded, changes in format, page length, etc., may occur.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Regulated categories and entities covered by this proposal are described in the following table:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated parties
State governments	92 (Public Admin)	9131 (Exec and Legislative Offices Cmb).	State governments involved with transportation and/or high occupancy vehicle facilities.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) System.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the proposed regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

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

1. Submitting Comments With Confidential Business Information (CBI)

Commenters who wish to submit proprietary information or CBI for consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**). Do not submit CBI to EPA through the docket, 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 CBI must be submitted for inclusion in the public docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

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.

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I. Why Is This Action Being Taken?

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). In general, SAFETEA–LU builds on the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21) to supply funds and improve the programmatic framework for investments needed to maintain and grow the U.S. transportation infrastructure. SAFETEA–LU specifically covers Federal surface transportation programs for highways, highway safety, and transit from 2005 until 2009. The HOV facilities provisions of Section 1121 of SAFETEA–LU, which are codified at 23 U.S.C. 166, are the subject of this proposal.

With a number of exceptions described more fully in Section 1121 of SAFETEA–LU, vehicles using HOV facilities must have two or more occupants. One of those exceptions is contained in 23 U.S.C. 166 and provides

an exemption to this occupancy requirement for ''inherently low emission'' vehicles and other 'low emission and energy-efficient' vehicles. Specifically, SAFETEA–LU added section 166(b)(5)(A) to title 23 of the U.S.C., which permits states to allow vehicles certified as ''inherently low emission'' vehicles to be exempted from the HOV facility occupancy requirements. ''Inherently low emitting'' vehicles are defined in title 40 section 88.311–93 of the Code of Federal Regulations (CFR). In addition, 23 U.S.C. 166 allows, but does not require, states to include a new occupancy exemption for the use of ''low emission and energy-efficient'' vehicles that do not meet the minimum occupancy requirement in HOV facilities. Section 166(e) of 23 U.S.C. lays the groundwork for this proposal. Specifically, it directs EPA to issue regulations for certifying ''low emission and energy-efficient vehicles,'' establishing procedures for making fuel economy comparisons in order to determine qualifying vehicles, and providing requirements for labeling these vehicles. States with HOV facilities may optionally adopt this exemption, which expires September 30, 2009. This expiration date means that, unless Congress issues a reauthorization for the provisions in 23 U.S.C. 166, state programs allowing low emission and energy-efficient vehicles that do not meet the minimum occupancy requirement to use HOV facilities will no longer be federally permitted and low emission and energy-efficient vehicles that do not meet the established occupancy requirement will no longer be eligible to use HOV facilities.

According to section 1121(c) of SAFETEA–LU, it is the sense of Congress to provide additional incentives (including the use of HOV facilities on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicle technologies, which have been proven to reduce exhaust emissions and decrease fossil fuel consumption by the transportation sector.

EPA believes that this proposed rulemaking appropriately meets the requirements of 23 U.S.C. 166 by providing a useful methodology for designating vehicles as low emission and energy-efficient, thereby furthering the intent of Congress.

II. What Are EPA's Proposed Requirements for the Certification of Low Emission and Energy-Efficient Vehicles?

To fulfill the requirements of 23 U.S.C. 166, a low emission and energy-efficient vehicle must meet the definition provided in 23 U.S.C. 166(f)(3). This definition includes separate components for emissions and energy efficiency. The sections below discuss EPA's proposed criteria for determining a ''low emission'' and ''energy-efficient'' vehicle, based on the statutory definition.

A. How Is EPA Proposing To Determine a Low Emission Vehicle?

Section 166(f)(3)(A) defines the ''low emission'' component of a ''low emission and energy-efficient'' vehicle to be a vehicle that has been certified by EPA as meeting ''the Tier II emission level established in regulations prescribed by the EPA under section 202(i) of the Clean Air Act (CAA) for that vehicle's make, model, and model year'' (''Tier II'' will hereafter be referred to as ''Tier 2''). The Tier 2 emission certification standards phase in over time and by vehicle classification. The standards took effect beginning in model year 2004 and will be fully implemented for light-duty vehicles and light light-duty trucks, up to 6000 pounds (lbs.) gross vehicle weight rating (GVWR), in 2007 (40 CFR 86.1811–04(k)). The standards for heavy light-duty trucks, 6000 to 8500 lbs. GVWR, will not be fully implemented until the 2009 model year. The Tier 2 standards also apply to medium-duty passenger vehicles, 8501 to 10,000 lbs. GVWR, but these vehicles are not included in this proposal, as vehicles weighing over 8500 lbs. GVWR are statutorily exempted from federal fuel economy requirements until 2011,[1] as described in 49 U.S.C. 32908(a).

The Tier 2 emission standards are based on a system of emission bins in which light-duty vehicles and light-duty trucks are certified in one of eight bins;[2] Bin 1 represents the cleanest or lowest emitting vehicles, and Bin 8 represents the highest emitting vehicles of the Tier 2 bins. Thus, some Tier 2 vehicles will be more polluting than others. The emission standards for a manufacturer's vehicle fleet must comply on average with the Tier 2 Bin 5 level. Thus, the Tier 2 Bin 5 emission certification levels are the average of the Tier 2 emission levels with lower bins (i.e. 4, 3, 2, or 1) representing lower emitting vehicles and higher bins (i.e. 6, 7, or 8) representing vehicles that are more polluting.

In addition, while 23 U.S.C. 166 specifically mentions the Federal emission certification levels of Tier 2, not all vehicles are certified to comply with federal standards. California has separate emission standards (along with a number of states that have adopted California's emission standards as permitted under Section 177 of the Clean Air Act (42 U.S.C. 7507.), which are generally equivalent to the Tier 2 standards. The current California emission standards are known as Low Emission Vehicle–II (LEV–II) standards (Final Regulation Order as Filed with the Secretary of State, October 28, 1999).[3] California-certified vehicles were required to begin phasing-in to the LEV–II standards in 2004.

The LEV–II standards are grouped in the following categories (listed in order of least to most stringent): Low emission vehicle (LEV), ultra low emission vehicle (ULEV), super low emission vehicle (SULEV), partial zero emission vehicle (PZEV), and zero emission vehicle (ZEV). There are separate emission standards under each of these categories for passenger cars,[4] up to 8500 lbs. GVWR and medium-duty vehicles, 8501–14,000 lbs. GVW. As discussed above, this proposal applies only to vehicles with vehicle weight at or below 8500 lbs. GVWR, so the standards for medium-duty vehicles are not relevant to the proposal.

Since 23 U.S.C. 166 specifies that vehicles meet ''the Tier II emission level'', and since Tier 2 Bin 5 represents the required manufacturer fleet average, this action proposes that in order to be considered as a ''low emission vehicle,'' a vehicle must comply with Tier 2 Bin 5 or better (Bins 5, 4, 3, 2 and 1). For the purpose of this proposal, we are considering vehicles certified to the California LEV II standards (13 CCR 1961(a)(1)) for passenger cars and light trucks (LEV II, ULEV II, SULEV II, PZEV, and ZEV) as meeting the Tier 2 emission level, because the emission levels required by those standards are equivalent to or more stringent than the Tier 2 Bin 5 level (13 CCR 1961(a)(1)).

There are several reasons why EPA believes it is appropriate to propose that

[1] The National Highway Traffic Safety Administration recently finalized a rulemaking, ''Average Fuel Economy Standards for Light Trucks Model Years 2008–2011'' (March 29, 2005), that extends fuel economy provisions for CAFE for medium-duty passenger vehicles weighing 8501–10,000 lbs. GVWR. However, these provisions do not take effect until 2011 and thus will not impact this notice. *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/2006FinalRule.pdf,* last viewed 4/5/06.

[2] In actuality, there are up to 11 Bins for Tier 2. However, Bins 9–11 are only interim phase-in bins that expired at the end of the 2006 model year for cars and light trucks.

[3] *http://www.arb.ca.gov/msprog/levprog/levii/levii.htm,* last viewed 4/5/06.

[4] California passenger cars include light-duty vehicles and light-duty trucks, including most sport utility vehicles and most large pickup trucks.

a vehicle must meet EPA Tier 2 Bin 5 or better to be designated as ''low emission.'' First, these standards meet the 23 U.S.C. 166 requirement that vehicles meet the Tier 2 emission level, which is best understood to mean the average level. Second, EPA believes it is appropriate to limit the bins to Tier 2 Bin 5 or cleaner, because Bin 5 represents the required manufacturer fleet average emission standard. Any vehicle certified to comply with a less stringent bin would have emission levels higher than the required fleet average, and thus is not reasonably considered a ''low emission'' vehicle. Third, this proposal is generally consistent with a separate statutory requirement in the Energy Policy Act of 2005 (hereafter referred to as ''Energy Act'') (Pub. L. 109–58, August 8, 2005) which requires a vehicle to meet, at a minimum, the Tier 2 Bin 5 emission levels, along with a minimum fuel economy, in order to qualify for a motor vehicle tax credit.

Therefore, based on the rationale described above, this action proposes that a ''low emission'' vehicle must be certified to the EPA Tier 2 Bin 5 or cleaner, or California LEV–II, ULEV–II, SULEV–II, PZEV, and ZEV emission levels for light-duty vehicles and light-duty trucks up to 8500 lbs. GVWR.

B. How Is EPA Proposing To Determine an Energy-Efficient Vehicle?

23 U.S.C. 166 states that a vehicle must be ''energy-efficient'' in order to be eligible for exemption from the HOV facility occupancy requirements. In particular, section 166(f)(3)(B) states that the term ''energy-efficient'' vehicle means:

(1) A vehicle that achieves a 50 percent increase in city fuel economy at a minimum or a 25 percent increase in combined city-highway fuel economy at a minimum relative to a comparable gasoline-fueled vehicle, excluding gasoline-hybrid technologies; or

(2) An alternative fuel vehicle.

EPA's proposed methodology for determining a comparable gasoline-fueled vehicle (excluding hybrid technology), and thus determining eligibility for an HOV occupancy exemption based on a fuel economy comparison, is described below. In addition, to help ensure HOV facility performance would not be degraded as a result of the occupancy exemption, 23 U.S.C. 166 provides states with the discretion to require more stringent fuel economy criteria (that is, a greater city or city-highway fuel economy percent increase) for their HOV programs.

In addition to defining an energy-efficient vehicle based on the fuel economy criteria referenced above, 23 U.S.C. 166 allows specified alternative fuel vehicles to be considered as energy-efficient. The specified alternative fuels that are covered by 23 U.S.C. 166, and hence this proposal, are listed in section D below.

1. What Fuel Economy Values Are Being Used To Determine if a Vehicle Is Energy-Efficient?

To ensure that there is no added test burden imposed on manufacturers, we are proposing that the fuel economy values to be used to determine if a vehicle is energy-efficient are the unadjusted city, highway and combined fuel economy values obtained during the fuel economy testing required under the Energy Policy and Conservation Act of 1975 (EPCA). Under EPCA, EPA is required to determine the test methods and calculations for two major fuel economy programs: Corporate Average Fuel Economy (CAFE) and consumer-friendly fuel economy information (city and highway estimates posted on new vehicle labels). The underlying tests specified by EPA are the same for both programs; however, the resulting city, highway, and combined fuel economy results are different.

The CAFE values are based on two tests—the city test and the highway test. The test results are combined by harmonically averaging them, with city weighted 55 percent and highway weighted 45 percent. The combined city-highway fuel economy value is then put through a series of complex calculations to determine the manufacturers' average fuel economy values separately for their entire car and truck fleets.

The label values for 2007 and earlier models are likewise based on the same two city and highway tests. However, the results are adjusted downward (the city by 10 percent and the highway by 22 percent), to better match a driver's real-world fuel economy experience. For 2008 and later models, EPA recently finalized new regulations removing those adjustment factors and instead requiring data from three additional tests to be included in the calculations to bring the estimates even closer to drivers' experience. (71 FR 77872, December 27, 2006). The fuel economy of 2008 and later models will not be able to be easily compared to that of earlier models. Not only would this be more complex to administer, it would create the possibility for consumer confusion in that a 2008 vehicle may not qualify whereas its identical 2007 counterpart would (or vice versa). For that reason, it is less desirable to use the label values as the basis for determining if a vehicle is ''energy efficient'' under the meaning of 23 U.S.C. 166.

For these reasons, we are therefore proposing that the fuel economy values to be used are the unadjusted city, highway and combined values used to determine CAFE (referred to hereafter as ''unadjusted'' city, highway, and combined fuel economy). These values provide a more constant baseline for comparison.

2. How Is EPA Proposing To Determine a ''Comparable Vehicle''?

The Transportation Act did not specify what criteria EPA should use in determining what a ''comparable'' vehicle is. There are considerable challenges in determining a ''comparable'' vehicle. There are infinite parameters against which a comparison could be made. For instance, should the comparison parameters consider similar vehicle weights, similar body designs, similar power ratings, similar make/model names, similar transmission types, similar drive trains, etc. Moreover, EPA, as well as other government agencies, has described, either by regulation or by policy, so-called ''comparable'' vehicle classes in which vehicles are lumped together based on some sorts of similarities. For the purpose of this proposed rule, we considered three different methods to look at ''comparable'' vehicles. These are: (1) A hybrid-to-gasoline vehicle comparison (the method we are proposing in this action), (2) a grouping of vehicles into inertia weight classes as specified in the 2005 Energy Act, and (3) a comparison to the ''Best in Class'', using the comparable classes used by EPA's annual Fuel Economy Guide, which is jointly published by EPA and DOE. Further detail can be found in the Draft Technical Support Document, which has been placed in the docket for this rulemaking (EPA–HQ–OAR–2005–0173).

In choosing a comparison strategy for this proposal, we considered the intent of Congress which, according to 23 U.S.C. 166, was to ''provide additional incentives (including the use of HOV facilities on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicles'' (23 U.S.C. 166(c)). We also considered the potential for lane degradation caused by allowing more vehicles in HOV facilities as determined by the number of vehicles that would qualify for the occupancy exemption under the comparison strategy. A shorter, more conservative list that highlights truly energy-efficient vehicles would help to minimize any additional vehicle volume added to HOV facilities.

Based on our evaluation of each potential ''comparison vehicle'' methodology, we are proposing to compare hybrid-electric vehicles to their gasoline counterparts, that is, those of the same or similar make and model type, to see if the fuel economy of the hybrid had the prescribed percent increase over the gasoline model. This method only compares hybrid vehicles to gasoline vehicles, and does not compare any gasoline, diesel, or flexible-fuel vehicles to a gasoline vehicle.[5]

This methodology appears to best reflect the intent of Congress expressed in 23 U.S.C. 166(c) and in the legislative history of this provision.[6]

(1) How does EPA propose to develop baseline fuel economy values for the hybrid-to-gasoline vehicle comparison methodology?

In this method, hybrid vehicles would be compared to their gasoline namesake counterparts (e.g. the Ford Escape Hybrid would be compared to the Ford Escape gasoline model).

However, there are some hybrids that do not have similar gasoline counterparts (e.g. the Honda Insight and the Toyota Prius). For those vehicles, EPA is proposing that the comparison be based on gasoline vehicles within the same comparable class as used EPA's annual Fuel Economy Guide, which is jointly published by EPA and DOE. The median unadjusted fuel economy of all the gasoline vehicles in that class would be determined, and then compared against the hybrid's fuel economy. This comparison would be done separately for each model year. For example, the Honda Insight is classified as a ''two-seater.'' For each model year, we would identify all of the ''two-seater'' gasoline vehicles and determine the median unadjusted city and unadjusted combined city-highway fuel economy values. These fuel economy values would form the baseline fuel economy values to be used for the Honda Insight comparison.

As fuel economy can vary from year to year, these comparisons must be made separately for each model year.

(2) How is the comparison determined, based on a percent increase in vehicle fuel economy value?

We are proposing the following process for making a fuel economy comparison using the hybrid-to-gasoline vehicle comparison methodology:

(1) Determine the list of all hybrid vehicles (separately for each model year) emission-certified by EPA prior to September 30, 2009.

(2) For hybrid vehicles with a similar gasoline counterpart, compare the unadjusted city and unadjusted combined city-highway fuel economy values to the similar gasoline counterpart.

(3) For hybrid vehicles with no similar gasoline counterpart, calculate the median unadjusted city and/or unadjusted combined city-highway fuel economy values for all gasoline vehicles in the same EPA comparable vehicle class and then compare the hybrid vehicle fuel economy values to the median unadjusted city fuel economy value and the unadjusted city-highway value for the comparison gasoline vehicle.

(4) Evaluate the results according to the following criteria:

- If the candidate hybrid vehicle's city fuel economy is 50 percent greater than the city fuel economy value of its gasoline counterpart then the vehicle would qualify as energy-efficient;
- If the candidate hybrid vehicle's combined city-highway fuel economy is 25 percent greater than the combined city/fuel economy of its gasoline counter part, then the vehicle would qualify as energy-efficient; or
- Conversely, if the hybrid vehicles do not meet either of these required fuel economy thresholds relative to their gasoline counterparts, then the vehicle would not qualify as energy-efficient.

Based on the low emission and energy-efficient vehicle criteria using the hybrid-to-gasoline vehicle comparison methodology described above, the potential lists of vehicles eligible for an HOV occupancy exemption are shown in Tables 1 and 2 below. These lists are based on the most recent certification data available to EPA through model year 2007. This list will be expanded as necessary to include additional 2007–2010 model year vehicles certified by EPA. It is also important to note that an individual state's list may differ from these lists, since states have the option to increase the stringency of the designated fuel economy percent increase values. States do not have the option to increase the emission standard stringency.

TABLE 1.—LIST OF ELIGIBLE LOW EMISSION AND ENERGY-EFFICIENT VEHICLES USING THE HYBRID-TO-GASOLINE VEHICLE COMPARISON METHODOLOGY

MY	Mfr	Vehicle model	Engine family	Tran	Fuel economy guide class	Tier 2 std	Unadj city FE (mpg)	City FE Inc over baseline (%)	Unadj Cmb FE (mpg)	Cmb FE Inc over baseline (%)
CARS										
2003	Honda	Civic Hybrid	3HNXV01.36CV	AV	Compact	B5	52.6	52	56.0	75
2003	Honda	Civic Hybrid	3HNXV01.36CV	M5	Compact	B5	50.0	59	55.7	74
2003	Honda	Insight	3HNXV01.0PCE	AV	Two-seater	B5	62.8	249	66.4	66
2004	Honda	Civic Hybrid	4HNXV01.37CP	AV	Compact	B5	52.6	50	56.0	75
2004	Honda	Civic Hybrid	4HNXV01.37CP	M5	Compact	B5	50.0	42	55.7	74
2004	Honda	Insight	4HNXV01.0NCE	AV	Two-seater	B5	62.8	214	66.4	66
2004	Toyota	Prius	4TYXV01.5MC1	AV	Midsize	B3	66.6	200	65.8	106
2005	Honda	Civic Hybrid	5HNXV01.3YCV	AV	Compact	B2	52.6	50	56.0	41
2005	Honda	Civic Hybrid	5HNXV01.3YCV	M5	Compact	B2	50.0	42	55.7	40
2005	Honda	Insight	5HNXV01.0XCE	AV	Two-seater	B5	62.8	224	66.4	185
2005	Honda	Accord Hybrid	5HNXV03.01B4	L5	Midsize	B5	32.2	37	37.48	32
2005	Toyota	Prius	5TYXV01.5MC1	AV	Midsize	B3	66.6	201	65.8	140

[5] Alternate fuel vehicles are considered ''energy-efficient,'' but not subject to this comparison criterion.

[6] See House Report 109–203, pp. 852–53:

With respect to the determination of fuel economy performance requirements for a low emission or energy efficient vehicle not meeting occupancy requirements that is propelled by on-board hybrid technologies, the conferees have agreed to accept language in the Senate-passed legislation. Under this subsection, a low emission or energy efficient vehicle propelled by hybrid technology may access the HOV lane if the EPA certifies that it has achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy * * *

TABLE 1.—LIST OF ELIGIBLE LOW EMISSION AND ENERGY-EFFICIENT VEHICLES USING THE HYBRID-TO-GASOLINE VEHICLE COMPARISON METHODOLOGY—Continued

MY	Mfr	Vehicle model	Engine family	Tran	Fuel economy guide class	Tier 2 std	Unadj city FE (mpg)	City FE Inc over baseline (%)	Unadj Cmb FE (mpg)	Cmb FE Inc over baseline (%)
2006	Honda	Civic Hybrid	6HNXV01.3XCP	AV ...	Compact	B2	54.6	62	58.8	51
2006	Honda	Insight	6HNXV01.0VK5 ..	AV ...	Two-seater	B5	62.8	211	66.4	173
2006	Toyota	Prius	6TYXV01.5MC1 ..	AV ...	Midsize	B3	66.6	200	65.8	144
2007	Honda	Accord Hybrid	7HNXV03.0ZMC	L5	Midsize	B2	31.3	37	36.3	31
2007	Honda	Civic Hybrid	7HNXV01.3JCP ..	AV ...	Compact	B2	54.6	67	58.8	51
2007	Toyota	Camry Hybrid	7TYXV02.4HC1 ..	AV ...	Midsize	B3	44.2	66	45.9	44
2007	Toyota	Prius	7TYXV01.5HC1 ..	AV ...	Midsize	B3	66.6	210	65.8	154
TRUCKS										
2005	Ford	Escape Hybrid 2WD.	5FMXT02.31EE ..	AV ...	SUV	B4	39.6	65	39.5	46
2005	Ford	Escape Hybrid 4WD.	5FMXT02.31EE ..	AV ...	SUV	B4	36.6	78	36.7	57
2006	Ford	Escape Hybrid 4WD.	6FMXT02.32EE ..	AV ...	SUV	B4	36.6	59	36.7	41
2006	Ford	Escape Hybrid FWD.	6FMXT02.32EE ..	AV ...	SUV	B4	39.6	59	39.5	42
2006	Lexus	RX 400H 2WD	6TYXT03.3CC1 ..	AV ...	SUV	B3	36.8	141	36.2	96
2006	Lexus	RX 400H 4WD	6TYXT03.3CC1 ..	AV ...	SUV	B3	34.3	124	34.3	86
2006	Lexus	Tribute Hybrid 4WD.	6FMXT02.32EE ..	AV ...	SUV	B4	36.6	59	36.7	41
2006	Mercury	Mariner Hybrid 4WD.	6FMXT02.32EE ..	AV ...	SUV	B4	36.6	75	36.7	53
2006	Toyota	Highlander Hybrid 2WD.	6TYXT03.3CC1 ..	AV ...	SUV	B3	36.8	72	36.2	45
2006	Toyota	Highlander Hybrid 4WD.	6TYXT03.3CC1 ..	AV ...	SUV	B3	34.3	67	34.3	42
2007	Ford	Escape Hybrid 2WD.	7FMXT02.32ZE ..	AV ...	SUV	B3	35.8	55	36.5	39
2007	Ford	Escape Hybrid FWD.	7FMXT02.32ZE ..	AV ...	SUV	B3	41.1	64	40.6	45
2007	Lexus	RX 400H 2WD	7TYXT03.3CC1 ..	AV ...	SUV	B3	35.7	135	35.0	95
2007	Lexus	RX 400H 4WD	7TYXT03.3CC1 ..	AV ...	SUV	B3	34.3	126	34.3	91
2007	Mercury	Mariner Hybrid 4WD.	7FMXT02.32ZE ..	AV ...	SUV	B3	35.8	55	36.5	39
2007	Toyota	Highlander Hybrid 2WD.	7TYXT03.3CC1 ..	AV ...	SUV	B3	35.7	67	35.0	40
2007	Toyota	Highlander Hybrid 4WD.	7TYXT03.3CC1 ..	AV ...	SUV	B3	34.3	52	34.3	32
DEDICATED ALTERNATIVE FUEL (CNG) VEHICLES										
2003	Honda	Civic—CNG	3HNXV01.73W3	N/A		B2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2004	Honda	Civic—CNG	4HNXV01.74W0	N/A		B2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2005	Honda	Civic—CNG	5HNXV01.7BF3 ..	N/A		B2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2003	Ford	Crown Victoria—CNG.	3FMXV04.6VP5 ..	N/A		B3	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2004	Ford	Crown Victoria—CNG.	4FMXV04.6VP5 ..	N/A		B3	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			

Unless noted as a dedicated alternative fuel vehicle, all of the listed vehicles operate on gasoline, and some may also be flexible-fuel vehicles.
MY = Model Year
Mfr = Manufacturer
Tran = Transmission type
Int Wgt = Inertia Weight Class
Std = Standard
Unadj = Unadjusted
FE = Fuel Economy
Inc = Increase
Cmb = Combined city-highway
B = Bin

For states that have adopted the California emission certification standards, based on the California LEV–II (LEV–II, ULEV–II, SULEV–II, and ZEV) emission standards for passenger vehicles and a comparison based on the

hybrid-to-gasoline vehicle comparison methodology or a dedicated alternative fuel vehicle, the proposed list of vehicles eligible for the HOV occupancy exemption is as follows:

TABLE 2.—LIST OF CALIFORNIA-CERTIFIED ELIGIBLE LOW EMISSION AND ENERGY-EFFICIENT VEHICLES USING THE HYBRID-TO-VEHICLE VEHICLE COMPARISON METHODOLOGY

MY	Mfr	Vehicle model	Engine family	Tran	Fuel economy guide class	LEV-II std	Unadj city FE (mpg)	City FE Inc over baseline (%)	Unadj Cmb FE (mpg)	Cmb FE Inc over baseline (%)
CARS										
2003	Honda	Civic Hybrid	3HNXV01.36CV	AV	Compact	S2	52.6	52	56.0	45
2003	Honda	Civic Hybrid	3HNXV01.36CV	M5	Compact	S2	50.0	59	55.7	46
2003	Honda	Insight	3HNXV01.0PCE	AV	Two-Seater	S2	62.8	249	66.4	201
2004	Honda	Civic Hybrid	4HNXV01.37CP	AV	Compact	S2	52.6	50	56.0	41
2004	Honda	Civic Hybrid	4HNXV01.37CP	M5	Compact	S2	50.0	42	55.7	40
2004	Honda	Insight	4HNXV01.0NCE	AV	Two-seater	S2	62.8	214	66.4	177
2004	Toyota	Prius	4TYXV01.5MC1	AV	Midsize	S2	66.6	200	65.8	139
2005	Honda	Civic Hybrid	5HNXV01.3YCV	AV	Midsize	S2	52.6	50	56.0	41
2005	Honda	Civic Hybrid	5HNXV01.3YCV	M5	Compact	S2	50.0	42	55.7	40
2005	Honda	Insight	5HNXV01.0XCE	AV	Compact	S2	62.8	224	66.4	185
2005	Honda	Accord Hybrid	5HNXV03.01B4	L5	Midsize	S2	32.2	37	37.48	32
2005	Toyota	Prius	5TYXV01.5MC1	AV	Two-seater	S2	66.6	201	65.8	140
2006	Honda	Civic Hybrid	6HNXV01.3XCP	AV	Midsize	S2	54.6	62	58.8	51
2006	Honda	Insight	6HNXV01.0VK5	AV	Compact	S2	62.8	211	66.4	173
2006	Toyota	Prius	6TYXV01.5MC1	AV	Two-seater	S2	66.6	200	65.8	144
2007	Honda	Accord Hybrid	7HNXV03.0ZMC	L5	Midsize	S2	31.3	37	36.3	31
2007	Honda	Civic Hybrid	7HNXV01.3JCP	AV	Midsize	S2	54.6	67	58.8	51
2007	Toyota	Camry Hybrid	7TYXV02.4HC1	AV	Midsize	S2	44.2	66	45.9	44
2007	Toyota	Prius	7TYXV01.5HC1	AV	Midsize	S2	66.6	210	65.8	154
TRUCKS										
2005	Ford	Escape Hybrid 2WD.	5FMXT02.31EE	AV	4000	S2	39.6	65	39.5	46
2005	Ford	Escape Hybrid 4WD.	5FMXT02.31EE	AV	4000	S2	36.6	78	36.7	57
2006	Ford	Escape Hybrid 4WD.	6FMXT02.32EE	AV	SUV	S2	36.6	59	36.7	41
2006	Ford	Escape Hybrid FWD.	6FMXT02.32EE	AV	SUV	S2	39.6	59	39.5	42
2006	Lexus	RX 400H 2WD	6TYXT03.3CC1	AV	SUV	S2	36.8	141	36.2	96
2006	Lexus	RX 400H 4WD	6TYXT03.3CC1	AV	SUV	S2	34.3	124	34.3	86
2006	Mazda	Tribute Hybrid 4WD.	6FMXT02.32EE	AV	SUV	S2	36.6	59	36.7	41
2006	Mercury	Mariner Hybrid 4WD.	6FMXT02.32EE	AV	SUV	S2	36.6	75	36.7	53
2006	Toyota	Highlander Hybrid 2WD.	6TYXT03.3CC1	AV	SUV	S2	36.8	72	36.2	45
2006	Toyota	Highlander Hybrid 4WD.	6TYXT03.3CC1	AV	SUV	S2	34.3	67	34.3	42
2007	Ford	Escape Hybrid 4WD.	7FMXT02.32ZE	AV	SUV	S2	35.8	55	36.5	39
2007	Ford	Escape Hybrid FWD.	7FMXT02.32ZE	AV	SUV	S2	41.1	64	40.6	45
2007	Lexus	RX 400H 2WD	7TYXT03.3CC1	AV	SUV	S2	35.7	135	35	95
2007	Lexus	RX 400H 4WD	7TYXT03.3CC1	AV	SUV	S2	34.3	126	34.3	91
2007	Mercury	Mariner Hybrid	7FMXT02.32ZE	AV	SUV	S2	35.8	55	36.5	39
2007	Toyota	Highlander Hybrid 2WD.	7TYXT03.3CC1	AV	SUV	S2	35.7	103	35	69
2007	Toyota	Highlander Hybrid 4WD.	7TYXT03.3CC1	AV	SUV	S2	34.3	52	34.3	32
DEDICATED ALTERNATIVE FUEL (CNG) VEHICLES										
2004	Honda	Civic—CNG	4HNXV01.74W2	N/A		S2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			
2005	Honda	Civic—CNG	5HNXV01.7BF4	N/A		S2	DEDICATED ALTERNATIVE FUEL (CNG) VEHICLE.			

Unless noted as a dedicated alternative fuel vehicle, all of the listed vehicles operate on gasoline, and some may also be flexible-fuel vehicles.
MY = Model Year
Mfr = Manufacturer
Tran = Transmission

Int Wgt = Inertia Weight Class
Std = Standard
Unadj = Unadjusted
FE = Fuel Economy
Inc = Increase
Cmb = Combined city-highway
S2 = SULEVII
U2 = ULEVII

3. What Other Methods Did EPA Consider for Determining a ''Comparable Vehicle''?

(a) Inertia Weight Class Methodology

EPA also considered using inertia weight classes to determine comparable vehicles. This approach would consider all vehicles, regardless of fuel type or technology, as potentially energy-efficient, rather than just hybrid vehicles, as under the hybrid-to-gasoline vehicle comparison method. Thus, any gasoline, diesel, flexible-fuel, or hybrid vehicle could be considered energy-efficient, as long as it meets the fuel economy criteria referenced above.

EPA considered this fuel-neutral approach because, while the legislative history of SAFETEA–LU indicates an intent by Congress to limit this provision to hybrid and alternative fuel vehicles, the statutory provisions enacted by Congress do not explicitly limit this option to those types of vehicles. Additionally, a fuel-neutral approach would encourage fuel efficiency for all types of vehicles, not just hybrid vehicles. On the other hand, this approach would increase the number of vehicles potentially eligible to use HOV facilities under this provision, which could create the potential for substantial HOV lane degradation. We are not proposing this method, but request comment on it.

With the inertia weight class methodology, a comparable vehicle would be based on vehicle inertia weight classes,[7] which are consistent with those prescribed by the 2005 Energy Act. As the inertia weight classes are already defined in the 2005 Energy Act,[8] with an associated baseline city fuel economy value, the definition of a comparable vehicle would be based on the average fuel economy of all gasoline vehicles within the same inertia weight class for a vehicle type (car or truck). A baseline city fuel economy value and a baseline combined city-highway fuel economy value would then be used as the basis for the fuel economy comparison for each inertia weight class, separately for cars and trucks.

The baseline city fuel economy value would be the unadjusted CAFE city fuel economy as described above in section B.1 for the 2002 model year, as specified in the 2005 Energy Act. EPA believes that the baseline city fuel economy in the 2005 Energy Act was derived from gasoline vehicles only (excluding any gasoline-fueled hybrids) based on reverse-calculations using a sales-weighted harmonic average. Further detail on how these calculations were performed can be found in the Draft Technical Support Document, which has been placed in the docket for this rulemaking (EPA–HQ–OAR–2005–0173).

With regard to the baseline model for comparison using the inertia weight class method, we considered it most appropriate to use the model year 2002 data as a baseline for fuel economy comparisons for two reasons. First, the model year 2002 data was chosen in the 2005 Energy Act for alternative motor vehicle tax credit purposes. Second, the EPA Fuel Economy Trends Report (EPA420–R–06–011, July 2006) shows that overall fuel economy has been relatively constant over the past eight model years, except for light truck fuel economy, which has increased for two years. This increase is likely due, at least in part, to higher light-truck CAFE standards. Overall, fuel economy has been influenced by marginal changes in gasoline technology prior to the introduction of hybrid technology.[9] Thus, choosing a 2002 baseline can still be considered an appropriate baseline value for vehicle fuel economy comparisons, as it was calculated with gasoline vehicles whose overall fuel economy performance has remained somewhat constant for many years, except for the increase seen in light trucks over the last two years. Furthermore, applying one baseline for all model year comparisons would reduce time spent generating annual baselines and reduces the need to analyze annual sales data, which is often provided later in the model year than the date when a baseline would be required. Overall, EPA believes this approach would have a benefit of streamlining the implementation of the rule without impacting its effectiveness.

For the inertia weight class methodology, the following process would be used for making a fuel economy comparison:

(1) Sort the list of all potential vehicles (all model years available for sale prior to September 30, 2009) into two categories—car and light-duty truck.

(2) Sort both the car list and the light-duty truck list by inertia weight classes.

(3) Compare each vehicle's unadjusted city and unadjusted combined city-highway fuel economy values to the baseline values separately for cars and trucks.

(4) Calculate the percent increase in fuel economy for a candidate vehicle compared to the baseline for its given inertia weight class.

(5) Evaluate the results according to the following criteria:

a. If the percent increase for city fuel economy is greater than 50 percent over the baseline city fuel economy for the given inertia weight class, then the vehicle would qualify as energy-efficient;

b. If the percent increase for combined city-highway fuel economy is greater than 25 percent over the baseline combined city-highway fuel economy for the given inertia weight class, then the vehicle would qualify as energy-efficient; or

c. Conversely, if the candidate vehicle's fuel economy does not meet these required thresholds when compared to the baseline fuel economy for that inertia weight class category of that vehicle, then the vehicle would not qualify as energy-efficient.

Therefore, to qualify under the inertia weight class methodology, a candidate vehicle must achieve 25 percent or better city fuel economy or 50 percent or better combined city-highway fuel economy than the average of all vehicles in its inertia weight class.

Using this approach, the lists of potentially qualifying vehicles include a few models that fail to achieve the level of the CAFE standard. Therefore, we

[7] Inertia weight classes are determined by EPA regulations at 40 CFR 86.129–94. Inertia weight class is the class into which a vehicle is grouped for testing purposes based on its loaded vehicle weight (nominal empty vehicle weight plus 300 lbs. used for cars and for light-duty trucks up through 6000 lbs. GVWR) or adjusted loaded vehicle weight (average of nominal empty weight and gross vehicle weight rating used for light-duty trucks greater than 6000 lbs. GVWR).

[8] § 30B.1(b)(2)(B)(i) of Internal Revenue Code, 26 U.S.C.

[9] Hellman, Karl, and Robert Heavenrich. ''Light-Duty Automotive Technology and Fuel Economy Trends: 1975 Through 2004'' (FE Trends). EPA420–R–04–001, 2004.

believe that an additional criterion is necessary to determine if a vehicle is fuel efficient, not only on a relative basis, but on an absolute basis as well. Thus it is appropriate to add an additional comparison criterion, to be used as a ''floor'' to prevent the inclusion of vehicles which may be fuel efficient relative to others in the same inertia weight class, but which fail to have a combined fuel economy that is higher than 25 percent above the applicable CAFE car or truck standard. For example, the 2007 CAFE standard for light trucks is 22.2 miles per gallon (MPG). In order for a light truck to qualify for use in HOV facilities using the inertia weight class method, it would have to meet a minimum fuel economy of 27.75 MPG in order to qualify. We believe that this additional criterion is in keeping with the Transportation Act requirement that the combined fuel economy be 25 percent better than a comparable gasoline vehicle.

A complete discussion of the inertia weight class methodology, including the list of vehicles that would qualify using this approach, can be found in the Draft Technical Support Document located in the docket for this rulemaking.

EPA requests comment on using the inertia weight class methodology as a means for defining a comparable vehicle.

(b) ''Best in Class'' Methodology

EPA also considered defining a ''comparable vehicle'' as the vehicle with the best fuel economy of a particular class of vehicles as defined by the annual Fuel Economy Guide, which is jointly published by EPA and DOE. This approach is not a fuel and technology neutral approach, meaning that it only considers hybrid vehicles. No gasoline, diesel, or flexible-fuel would be considered for an HOV facilities exemption using this methodology. The primary benefit of this approach is that it would result in the smallest list of eligible vehicles and thus have the least potential impact on traffic congestion.

For the ''best in class'' methodology, the following process would be used for making a fuel economy comparison:

(1) Sort the list of all hybrid vehicles (all model years certified for sale prior to September 30, 2009) by the vehicle classes defined in the annual Fuel Economy Guide (*http://www.fueleconomy.gov/feg/feg2000.htm*) for each model year. The vehicle classes are defined in the Fuel Economy Guide as follows: Two-seater, Minicompact Vehicle, Subcompact Vehicle, Compact Vehicle, Midsize Vehicle, Large Vehicle, Small Station Wagon, Midsize Station Wagon, Large Station Wagon, Small Pickup Truck, Standard Pickup Truck, Passenger Van, Cargo Van, Minivan, Sport Utility Vehicle (SUV), and Special Purpose Vehicle.

(2) For each model year and each vehicle class, determine which gasoline vehicle has the highest unadjusted city and unadjusted city-highway combined fuel economy values. For example, for the 2006 model year, the compact vehicle with the highest unadjusted city and unadjusted combined city-highway fuel economy values is the Toyota Corolla. The Toyota Corolla would be the comparison vehicle for any 2006 hybrid vehicle that is classified as a compact car. In this case, the 2006 Honda Civic hybrid is the only hybrid classified as a compact car.

(3) Compare the hybrid vehicle fuel unadjusted economy values to the unadjusted city fuel economy value and the unadjusted city-highway fuel economy value for the comparison gasoline vehicle.

(4) Evaluate the results according to the following criteria:

- If the percent increase for city fuel economy is greater than 50 percent over the baseline city fuel economy for the given specific vehicle, then the vehicle would qualify as energy-efficient;
- If the percent increase for combined city-highway fuel economy is greater than 25 percent over the baseline combined city-highway fuel economy for the given specific vehicle, then the vehicle would qualify as energy-efficient; or
- Conversely, if the candidate vehicle's fuel economy does not meet these required thresholds when compared to the baseline fuel economy for that class of vehicle, then the vehicle would not qualify as energy-efficient.

A complete discussion of the ''best in class'' methodology, including the list of vehicles that would qualify using this approach, can be found in the technical support document located in the docket for this rulemaking.

EPA requests comment on using the ''best in class'' methodology as a means for defining a comparable vehicle.

C. Will All Hybrid Vehicles Qualify for the HOV Facilities Exemption?

(1) Hybrids That Do Not Meet the Low Emission Criterion

As discussed in this proposal, in order for a vehicle to qualify for HOV exemptions, that vehicle must be considered both low-emission and energy-efficient. As discussed above, EPA is proposing that vehicles must be certified to comply with EPA's Tier 2 Bin 5 or cleaner emission standards (or the equivalent CARB emissions standards) in order to be considered as ''low emission.'' When we apply this criterion, there are some hybrid electric vehicles which do not meet the Tier 2 Bin 5 or better threshold. The 2003 Toyota Prius would not qualify for the HOV exemption because it does not meet the Tier 2 Bin 5 or better criterion for ''low emission'' as proposed in this action. In addition, some versions of the Honda Insight and Honda Civic Hybrid in specific model years would not qualify. To distinguish which versions of the Insight and Civic Hybrid would qualify from those that would not, it is necessary to know the EPA engine family name (also referred to as ''test group name''), which is the unique EPA identifier pointing to the manufacturer's emission certification for that vehicle. This identifier is required to be printed on the emission information label located under the hood of every vehicle.

Table 3 below shows the Honda Civic Hybrid and Insight models which would not comply with Tier 2 Bin 5 or better emission standards, along with their model year counterparts which are Bin 5 or better and would therefore qualify for an HOV facilities exemption. These vehicles would not qualify regardless of which fuel efficiency methodology is applied.

TABLE 3.—COMPARISON OF ENGINE FAMILIES/TEST GROUPS THAT WOULD OR WOULD NOT QUALIFY BASED ON THE TIER 2 BIN 5 OR BETTER CRITERION

Model year and name	Engine family/test groups that do not qualify	Engine family/test group that would qualify
2003 Honda Civic Hybrid	3HNXV01.34A5	3HNXV01.36CV
2004 Honda Civic Hybrid	4HNXV01.35A6	4HNXV01.37CP
2005 Honda Civic Hybrid	5HNXV01.33A6	5HNXV01.3YCV
2003 Honda Insight	3HNXV01.01A4	3HNXV01.0PCE

TABLE 3.—COMPARISON OF ENGINE FAMILIES/TEST GROUPS THAT WOULD OR WOULD NOT QUALIFY BASED ON THE TIER 2 BIN 5 OR BETTER CRITERION—Continued

Model year and name	Engine family/test groups that do not qualify	Engine family/test group that would qualify
2004 Honda Insight	4HNXV01.02A6	4HNXV01.0NCE
2005 Honda Insight	5HNXV01.02A6	5HNXV01.0XCE
2006 Honda Insight	6HNXV01.0YJV	6HNXV01.0VK5

(2) Hybrids That Would Not Meet the Fuel Efficiency Criteria

With the hybrid-to-gasoline vehicle comparison methodology, the 2006 Honda Accord Hybrid would not qualify because its unadjusted city and unadjusted city-highway fuel economy values are not above the 25 percent and 50 percent thresholds when compared to the closest Honda Accord gasoline counterpart. In addition, the 2007 Lexus GS450H would not qualify either. Because the 2007 Lexus GS450H, which is classified as a compact car, does not have an identical gasoline counterpart, EPA compared its unadjusted city and unadjusted city-highway fuel economy to the median fuel economy values of all gasoline-fueled 2007 compact cars. When making this comparison, the GS 450H unadjusted city and unadjusted city-highway fuel economy values are not above the 25 percent and 50 percent thresholds and therefore would not qualify for an HOV facilities exemption.

D. What Alternative Fuel Vehicles Could Qualify for the HOV Facilities Exemption?

Alternative fuel vehicles would also qualify as energy-efficient vehicles under the HOV provisions in 23 U.S.C. 166. Congress specified that an alternative fuel vehicle must be operating on the alternative fuel in order to be eligible for an exemption from the HOV facility occupancy requirement. According to Section 166(f)(1) of 23 U.S.C. 166, the term ''alternative fuel vehicle'' means a vehicle that is operating on:

(1) Methanol, denatured ethanol, or other alcohols;

(2) A mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal derived liquid fuels;

(7) Fuels (except alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); or

(9) Any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).

There are, however, typically three different types of vehicles that might be considered alternative fuel vehicles—flexible-fuel vehicles, which can operate on a designated alternative fuel (such as 85 percent ethanol, 15 percent gasoline, known as E85), on a conventional fuel (such as gasoline), or any blend of the two; dual-fuel vehicles, which have two separate fuel systems allowing them to operate on either an alternative fuel (such as compressed natural gas) or on a conventional fuel (such as gasoline); or dedicated alternative fuel vehicles, which operate solely on a designated alternative fuel.

Since the statute specifies that the vehicle must be operating on the alternative fuel to qualify for the HOV facilities exemption, and there is no way to determine that flex-fuel and dual-fuel vehicles are actually using the designated alternative fuel while they are being operated in an HOV facility, we are proposing to exclude dual-fuel and flex-fuel vehicles from the HOV exemption as ''alternative fuel'' vehicles. While the computer systems on flex-fuel vehicles are calibrated to operate in different manners depending on what type of fuel the vehicle is operating, a state official trying to enforce the HOV facility exemptions would not be able to visually determine which fuel a flexible-fuel or dual-fuel vehicle is operating on at any given time. Since current enforcement of HOV requirements relies on vehicle labels that can be easily viewed from a distance, verifying that a vehicle is operating on a flexible fuel at any given time would require a more detailed (and potentially traffic-disrupting) interaction between enforcement officials and the driver, such as requiring a receipt showing recent proof of purchase of the alternative fuel. It is also important to note that the actual usage rate of an alternative fuel in a flexible or dual-fuel vehicle is estimated at somewhat less than one percent.[10] Furthermore, while there are around five million flexible-fuel vehicles on the road today, the majority of alternative fuel refueling stations are located in the midwestern states, while the majority of HOV facilities reside in urban areas of Eastern and Western states, making it even more unlikely that these vehicles would actually be using the alternative fuel while in the HOV facilities. There is a national effort underway to increase the availability of alternative fueling stations, especially E85, but it is unlikely that the numbers will increase significantly before the expiration of these HOV exemption provisions.

Therefore, to ensure the enforceability of the HOV occupancy exemption, this notice proposes to allow only dedicated alternative fuel vehicles to be eligible under the ''energy-efficient'' provision, provided that they also meet the proposed minimum ''low-emission'' criteria of Tier 2 Bin 5 or cleaner, as described in section II.A.1 above.

The dedicated alternative fuel vehicles that qualify are show above in Tables 1 and 2.

E. How Will EPA Make Available the List of Eligible Vehicles?

EPA is proposing to annually update the list of vehicles which it certifies would be eligible for exemption from the HOV facility requirement based on the low emission and energy-efficient requirements. This list of eligible vehicles would be provided to the Department of Transportation, which is responsible for implementation of HOV facilities, including these new HOV exemption provisions. EPA would also consider the most appropriate way to make the information available to the general public including posting the list on EPA's and DOT's web sites and/or publishing a notice in the **Federal Register**. It is important to note that while states have the flexibility to incorporate this HOV occupancy exemption for low emission and energy-efficient vehicles into their HOV facility

[10] National Highway and Traffic Safety Administration. ''Analysis of the Effects of on Energy Conservation and the Environment.'' *http://www.nhtsa.gov/cars/rules/rulings/CAFE/alternativefuels/analysis.htm.*

programs, they are not required to offer it. In addition, because states have the option to increase the stringency of the designated fuel economy percent increase values, an individual state's list may differ from the list of eligible vehicles made available by EPA. Therefore, a vehicle on EPA's list may not qualify in one or more states depending on how DOT and the states choose to implement these regulations. Vehicle owners interested in the HOV facilities exemption must consult with their state and local transportation authorities to ensure that a particular vehicle qualifies in his or her particular state.

F. What Labeling Requirements Is EPA Proposing for Low Emission and Energy-Efficient Vehicles?

Under 23 U.S.C. 166(e)(1), EPA must supply requirements for labeling low emission and energy-efficient vehicles that are eligible for the HOV occupancy exemption. To date, there are 22 states (AZ, CA, CO, CT, FL, GA, HI, IL, MA, MD, MN, NC, NJ, NY, NV, OR, PA, TN, TX, UT, VA, and WA) in addition to Washington DC with existing HOV facilities.

Under TEA–21 (Pub. L. 105–178, June 9, 1998), states were authorized to temporarily allow single-occupant clean fuel (i.e., alternative fuel) vehicles to use HOV facilities. As a result, many states already have labels. Label formats include decals and license plates, and these labels are used to identify the vehicle as eligible for the HOV occupancy exemption.

An example of California's 2005 decal is depicted in Figure 1. This decal is one of four California decals placed on a vehicle and is color-coded to represent either an alternative fuel (white) or hybrid vehicle (yellow). The sticker has a box where a vehicle identification or registration number is located (''XXXXXXXX'' in Figure 1). This number links the vehicle to the decal so that decals cannot be transferred from vehicle to vehicle. Since a vehicle that does not meet the minimum occupancy requirements for use in HOV facilities must have a special designation, the decal registration number provides the state with a method for tracking how many vehicles have qualified for use in HOV facilities. In addition, these existing formats are important for each state's ability to enforce the occupancy exemption allowance of vehicles in its HOV facilities.

Figure 1: Example of California Decal permitting vehicles that do not meet the minimum occupancy requirements for Use in HOV facilities

We are proposing that vehicles allowed in the HOV facilities which do not meet the minimum occupancy requirement be labeled to identify this special occupancy exemption. We are also proposing to allow states to use their existing decals or license plates, provided the format requires the vehicle to be registered within the state of use. Other formats may also be deemed appropriate by the Department of Transportation if they meet all labeling requirements.

We are not proposing to require a single standardized label for a number of reasons. First, EPA does not believe that a federally imposed label would be appropriate, since 23 U.S.C. 166 does not require states to allow low emission and energy-efficient vehicles that do not meet the established occupancy requirements in their HOV facilities. Thus, the requirements for labeling vehicles need to be limited to locales where they are eligible for use in HOV facilities. Moreover, since 23 U.S.C. 166 allows states to increase the stringency of the fuel economy comparison criteria, thereby decreasing the Federal list of eligible vehicles to use HOV facilities, states need flexibility to label only the eligible vehicles, as opposed to labeling all federally eligible vehicles.

Second, since certain states already have labeling methods, they have a developed knowledge and local experience enforcing HOV facilities based on their current labeling method. As a result, it would be potentially time consuming and costly to require states to revise or replace any current labeling method. It would also place an unnecessary inconvenience to vehicle owners to have to change labels.

Third, the most important purpose of the label is to facilitate a state's ability to enforce proper use of its HOV facilities, as well as monitor any degraded operational performance, by ensuring that only eligible low emission and energy-efficient vehicles are permitted in that state's HOV facilities. Thus, the format for a label must provide flexibility for each state to adopt what it believes is most enforceable.

This notice proposes that states would be responsible for printing and/or distributing the labels and, as a result, states could charge a registration fee for issuing a label to an owner. In addition, states would be responsible for tracking the labels by linking each label to a specific vehicle, through a registration number such as that depicted on Figure 1 or by the license plate number on

license plate formats. States would have to include information on the label that distinguishes a vehicle as low emission and as energy-efficient; wording such as that on California's decal (such as ''Clean Air Vehicle'') in addition to color coding to distinguish between alternative fuel and meeting fuel economy requirements would be deemed acceptable. Thus options that states may want to consider for designating a vehicle as an eligible low emission and energy-efficient vehicle may include, but are not limited to, wording or color coding.

EPA requests comment on how states with HOV facilities that border other states with HOV facilities (e.g. Virginia and Maryland), would address implementation and enforcement of the HOV facilities exemption.

In summary, with respect to vehicle labeling requirements, this action proposes that:

- Low emission and energy-efficient vehicles would be required to be labeled for the use in HOV facilities with easily visible labels for enforcement purposes;
- Labels already implemented by States would be acceptable for continued use. Any state with an HOV facility that does not have an existing label would be required to develop one based on the formats already accepted or create a new format which includes all proposed requirements and subject to approval by the Department of Transportation;
- Labels have a registration number that would link the label to the particular vehicle so that labels could not be transferred;
- States are responsible for printing and/or distributing the labels;
- Labels easily identify low emission and energy-efficient vehicles that are exempted from the HOV occupancy requirements and therefore permitted to use HOV facilities, based on factors such as, location, color, and wording that designates the vehicle as low emission and energy-efficient; and
- States must include an expiration date on their labels.

We believe it would be most appropriate for states to develop labels for purposes of identifying vehicles that qualify to be used in HOV facilities. However, we are seeking comment on the potential use of a federally-developed labeling program. By way of example, EPA has developed a voluntary ''SmartWay'' program that includes a variety of ways to reduce greenhouse gas and air pollution across a number of different industry sectors. While the program success to date has primarily been in the heavy-duty sector, SmartWay criteria have been established to designate light-duty vehicles that are environmental leaders, in terms of greenhouse gas and air pollution. There are two stringency levels for SmartWay vehicles: SmartWay and SmartWay Elite. Currently, these designations are used only on EPA's Green Vehicle Guide web site, which is targeted at car-buyers. The SmartWay logo used is shown in Figure 2 below.

Figure 2: SmartWay Logo

There are currently no ''decals'' or ''stickers'' to place on vehicles, nor has EPA established guidelines to car makers to do so. However, if EPA were to specify a format, the SmartWay logo could potentially serve this purpose.

EPA seeks comment on the usefulness and feasibility of a permanent federal SmartWay label on eligible vehicles as a potential component of the HOV labeling requirement.

G. What Impacts Are Associated With This Rulemaking?

The main impact associated with this rulemaking is the impact consistent with the Congressional intent to provide non-financial incentives to increase the purchase of hybrids and other fuel efficient vehicles (23 U.S.C. 166(c)) as an alternative to higher emitting and less fuel efficient vehicles. There is some evidence supporting Congress' intent that this incentive would help increase interest in purchasing low emission and fuel efficient vehicles. For instance, in the State of Virginia, the HOV allowance for hybrid-electric vehicles that do not meet the established occupancy requirement proved to increase the use of hybrids by threefold from 2003 to 2004.[11] In Virginia, for 2004, an increase of 4300 hybrid vehicles means a reduction in carbon dioxide of 430–1720 lbs. per mile. Even after the occupancy exemption for low emission and energy-efficient vehicles in HOV facilities expires in September 2009, the benefit of introducing these vehicles into each state's fleet remain due to the improved fuel efficiency. Thus, 23 U.S.C. 166 has predetermined that there are benefits to this allowance. There are no foreseen adverse economic or air quality impacts associated with providing a comparison methodology through this rulemaking, as described below.

1. What Are the Economic Impacts?

There are no anticipated economic impacts of this proposal as there are no associated costs. The HOV exemption for low emission and energy-efficient vehicles is an optional exemption. 23 U.S.C. 166 is explicit that states are not required to implement this exemption, but may voluntarily choose to implement this exemption. Thus, there are no required costs for any state to implement an HOV exemption. While states that voluntarily choose to implement the HOV facility exemption are responsible for ensuring that HOV facilities do not become overcrowded; enforcing the use of HOV facilities by the exempted vehicles; and issuing labels for the vehicles, there are compensation mechanisms in place. For instance, states could charge for the label, and enforcement provisions can result in collected fines. Moreover, as 23

[11] Second Report of the High Occupancy Vehicle Enforcement Task Force, January 4, 2005, *http://www.vdot.virginia.gov/infoservice/news/newsrelease.asp?ID=NOVA–NR05–02.*

U.S.C. 166 prescribed, states have authority to charge a toll for low emission and energy-efficient vehicles that do not meet the occupancy requirement in HOV facilities.

2. What Are the Congestion Impacts on HOV Facilities?

Since there are relatively few HOV facilities that currently allow environmentally-friendly vehicles, data on the potential impact of hybrid vehicles on HOV facilities is limited.

The best publicly available information comes from a report by the Virginia Department of Transportation's High-Occupancy Vehicle Enforcement Task Force dated January 4, 2005. This report illustrates that the growth in the number of clean special fuel license plates issued in Virginia has increased significantly since hybrid vehicles became available. In fall 2003, hybrid vehicles accounted for between two percent and 12 percent of the peak-period volumes in the HOV lanes in northern Virginia. In the fall of 2004, hybrid vehicles accounted for between 11 percent and 17 percent of vehicles in the I–95 HOV lanes during the three-hour morning peak-period. The actual number of hybrids during the morning peak period ranged from 844 to 1,422 and the corresponding total vehicle volumes in the HOV lane ranged from 7,994 to 8,450. While we do not have more current data, we would expect that these percentages have continued to grow over the last two years.

The Task Force report concluded that, ''The rapid growth in hybrids has helped push the I–95 HOV lanes beyond the recommended HOV operating capacity, which is 1,500 to 1,800 vehicles per lane, per hour. The Task Force recommends that only the cleanest hybrid vehicles be allowed to use the HOV lanes and that the current hybrid exemption from HOV restrictions expire in 2006, as provided in the current Virginia law.'' [12] Subsequent to the report, Virginia did not let the hybrid exemption expire, but instead capped the number of hybrid vehicle plates.

For demonstration purposes, EPA has also estimated the potential number of vehicles that are projected to be available for sale nationwide in the 2007 model year for each of the comparable vehicle methodologies described above (see Table 4 below).

TABLE 4.—POTENTIAL NUMBER OF ELIGIBLE VEHICLES BASED ON NATIONWIDE SALES FOR EACH VEHICLE COMPARISON METHODOLOGY

Model year	Hybrid-to-Gasoline comparison	Inertia weight comparison	Hybrid-to-''Best in Class'' comparison
2003	33593	33593	1011
2004	71334	71334	48513
2005	105505	238424	79773
2006	213338	328250	124536
2007	326245	665157	147583
Total	750015	1336758	401416

These values include actual sales data whenever it is available. In cases where actual sales data is unavailable, we used projected sales data that are provided to EPA by each manufacturer. In addition, these values reflect nationwide sales data. Without state by state vehicle registration data, it is not possible to estimate with any accuracy the actual vehicles that are used in areas with HOV occupancy exemptions.

3. What Are the Other Impacts?

There are no associated adverse air quality impacts of this proposal. 23 U.S.C. 166 requires EPA to codify a procedure for certifying low emission and energy-efficient vehicles and places the responsibility on individual states to determine if an HOV exemption for low emission and energy-efficient vehicles benefits or impedes the air quality goals of that state. As a result, 23 U.S.C. 166 provides mechanisms to ensure that such an exemption does not adversely impact air quality.

First, 23 U.S.C. 166 designates the HOV exemption for low emission and energy-efficient vehicles as a voluntary program. Thus, a state chooses whether this exemption meets its needs or not. Second, 23 U.S.C. 166 allows states to increase the fuel economy thresholds per the energy-efficient designation in order to further minimize the number of vehicles which qualify as low emission and energy-efficient, thereby managing the number of exempted vehicles using the limited excess capacity of HOV facilities. Third, 23 U.S.C. 166 requires states that choose to implement this HOV exemption to ensure that the HOV facilities are not overburdened by the addition of exempted vehicles and provides minimum operating speed guidelines for assessing HOV facility degradation. Finally, EPA is proposing regulations to ensure that only the ''cleanest'' of the Tier 2 fleet qualify as ''low emission'' and the minimum number of truly energy-efficient vehicles qualify as ''energy-efficient.'' Therefore, these four safeguards form our belief that there would be no adverse environmental impacts due to the HOV exemption for low emission and energy-efficient vehicles.

III. Request for Comments

Although EPA requests comments on all aspects of this proposal, we are specifically requesting comment on the following topics proposed in this action:

- Eligibility for a low emission vehicle based on Tier 2 Bin 5 or cleaner for light-duty vehicles, or comparable California LEV–II or cleaner for passenger vehicles to comply with the 23 U.S.C. 166 Tier 2 requirements.
- Use of a hybrid-to-gasoline vehicle comparison methodology to determine vehicle eligibility.
- Use of a ''best in class'' methodology to determine vehicle eligibility.
- Eligibility for an energy-efficient vehicle based on operating on an alternative fuel limited to dedicated alternative fuel vehicles only.
- Necessity of a Federal versus state-by-state labeling system.
- Proposed labeling requirements, as well as any necessary enforcement

[12] Second Report of the High Occupancy Vehicle Enforcement Task Force, January 4, 2005, *http://www.vdot.virginia.gov/infoservice/news/newsrelease.asp?ID=NOVA–NR05–02.*

provisions that should be required on a label.

The following topics were not proposed in this action, but EPA is specifically requesting comment on them:

- Use of an inertia weight class methodology to determine vehicle eligibility.
- For the inertia weight class methodology, the usefulness of requiring an additional criterion that any vehicle which meets the low emissions and criteria must also have an unadjusted combined fuel economy that is at least 25 percent higher than the applicable car or truck CAFE standard.
- The availability of technology or other methodology that can demonstrate when a flexible-fuel vehicle is operating on an alternative fuel versus a conventional fuel.
- Data indicating the extent to which flexible-fuel vehicles are operating on the alternative fuel in an area or region.

IV. What Are the Opportunities for Public Participation?

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If EPA receives requests to present oral testimony, a public hearing will be scheduled. Information regarding the timing for requesting a public hearing is indicated under **DATES** above.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposal, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this proposal. You should send all comments, except those containing proprietary information, to our Docket (see **ADDRESSES**) before the end of the comment period.

A. Copies of This Proposal and Other Related Information

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2005–0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing by referencing Docket No. EPA–HQ–OAR–2005–0173 (see **ADDRESSES**).

You may submit comments electronically, by mail, or through hand delivery/courier as described below. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section IV.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select search, then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should notify the general contact person (see **FOR FURTHER INFORMATION CONTACT**) no later than five days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first served basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first served basis following the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to Docket No. EPA–HQ–OAR–2005–0173 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

V. What Are the Administrative Requirements for This Proposed Rule?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

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 action does not require any state to implement the provisions of this action. In addition, this action does not require that any information is collected, but rather supplies guidance and a comparison methodology for generating a list of eligible low emission and energy-efficient vehicles that are exempted from the HOV occupancy requirements.

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 this proposal on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration 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 this proposed rule on small entities, EPA certifies that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any requirements on small entities. This action proposes regulations for defining low emission and energy-efficient vehicles and for labeling these vehicles in HOV facilities, according to the provisions defined by Congress in SAFETEA–LU. As also prescribed by Congress, these definitions and comparison strategies are implemented optionally by the states; there is no requirement that a state would have to allow low emission and energy-efficient vehicles to use the HOV facilities. Furthermore, this action proposes a flexible format for labeling vehicles, so as to minimize the burden on states with existing HOV programs and labeling strategies. We have therefore concluded that this proposed rule would not impact, or would have a neutral impact on, burden for all 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), 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 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.

This proposal 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 action proposes to implement mandates specifically and explicitly set forth by the Congress in SAFETEA–LU without the exercise of any policy discretion by EPA, and the proposal would impose no enforceable duty on any state, local or tribal governments or the private sector. This proposal provides clarification on determining whether a vehicle is low emission and energy-efficient and a comparison strategy for designating a comparable vehicle for performing fuel economy percent increase calculations. This action was prescribed by Congress,

and SAFETEA–LU is explicit that states are not required to adopt these provisions. Instead, participation in this program would be voluntary and would allow voluntary measures to increase the stringency of the comparison strategy to meet individual state's needs.

EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. These provisions are applicable for states with existing HOV facilities and do not require any state to install HOV facilities. In addition, the labeling requirements have been proposed as flexible in order to avoid causing expenditures on a new method of labeling vehicles in states where labeling systems already exists. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

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'' 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 proposed 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. The provisions in this proposed rule do not require that a state implement them, and the stringency of the provisions can be optionally increased. This proposed rule defines requirements that could be used to implement HOV occupancy exemptions for low emission and energy-efficient vehicles, but provides ample flexibility for states to decide whether or not to implement and/or whether or not to increase stringency. Thus, Executive Order 13132 does not apply to this proposal. Although section 6 of Executive Order 13132 does not apply to this proposal, EPA did consult with representatives of state and local governments in developing it. The conversations resulted in requests for flexibility in labeling and allowing states to determine any implementation or enforcement provisions. This action would allow both.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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 proposed rule would not have tribal implications, as specified in Executive Order 13175. This proposed rule would apply to state highways with HOV facilities, and involves state governments and/or transportation entities if a state chooses to implement the rule. Thus, Executive Order 13175 does not apply to this proposed 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 EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed rule is not subject to EO 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 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 rule is the result of a directive by 23 U.S.C. 166 to codify the certification of low emission and energy-efficient vehicles. The sense of Congress is to ''provide additional incentives (including the use of high occupancy vehicle facilities on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicles, which have been proven to minimize air emissions and decrease consumption of fossil fuels'' (Section 1121(c) of 23 U.S.C. 166). This intent demonstrates Congress's belief that this rule would not have adverse effects on the supply, distribution, or use of energy. In fact, the HOV occupancy exemption provision for ''low emission and energy-efficient'' vehicles should have a positive effect, reducing the effect on the supply, distribution, or use of energy by encouraging the purchase and use of fuel efficient vehicles. Thus, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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.

VI. What Are the Statutory Provisions and Legal Authority for This Proposed Rule?

Statutory authority for this action is found in 23 U.S.C. 166. This action is being proposed under the administrative and procedural provisions of the Administrative Procedures Act, 5 U.S.C. 553.

List of Subjects in 40 CFR Part 601

Environmental protection, Administrative practice and procedure, Fuel economy, Reporting and recordkeeping requirements.

Dated: May 16, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40 Chapter I of the Code of Federal Regulations is proposed to be amended by adding a new part 601 as follows:

PART 601—QUALIFICATION CRITERIA FOR LOW EMISSION AND ENERGY-EFFICIENT VEHICLES

Sec.

601.1 General applicability.
601.2 Definitions.
601.3 Abbreviations.
601.4 Criteria for qualifying as a low emission and energy-efficient vehicle.
601.5 Criteria for qualifying as a low emission vehicle.
601.6 Criteria for qualifying as an energy-efficient vehicle.
601.7 Criteria for determining a comparable gasoline-fueled vehicle based upon the unadjusted city fuel economy.
601.8 Criteria for determining a comparable gasoline-fueled vehicle based upon the unadjusted combined city-highway fuel economy.
601.9 How to determine if a candidate vehicle meets the ''energy-efficient'' criteria based on fuel economy.
601.10 Certification requirements.
601.11 Labeling requirements for low emission and energy-efficient vehicles.

Authority: 23 U.S.C. 166.

§ 601.1 General applicability.

The provisions of this part are applicable to 2002 and later model year vehicles that may qualify for use in high occupancy vehicle facilities in states that elect to allow such use. These provisions expire on September 30, 2009.

§ 601.2 Definitions.

Any terms defined in 40 CFR parts 86 and 600 and not defined in this part shall have the meaning given them in §§ 86.1803 and 600.002 of this chapter.

Alternative fuel vehicle means a vehicle that is operating on—

(1) Methanol, denatured ethanol, or other alcohols;

(2) A mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal derived liquid fuels;

(7) Fuels (except alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); or

(9) Any other fuel that the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).

Unadjusted city fuel economy means the model type city fuel economy as calculated in 40 CFR 600.207–93.

Unadjusted combined city-highway fuel economy means the model type combined fuel economy as calculated in 40 CFR 600.207–93.

§ 601.3 Abbreviations.

The abbreviations of 40 CFR parts 86 and 600 also apply to this part. The abbreviations in this section apply to this part only.

HOV means High Occupancy Vehicle.

§ 601.4 Criteria for qualifying as a low emission and energy-efficient vehicle.

In order to meet the criteria for being certified as a low emission and energy-efficient vehicle under this part, a vehicle must meet the criteria for qualifying as a low emission vehicle under § 601.5 and must meet the criteria for qualifying as an energy-efficient vehicle under § 601.6. A state that elects to allow low emission and energy-efficient vehicles to use HOV facilities may require that a vehicle meet a level of comparative percentage increase in fuel economy that is greater than the percentages in § 601.6(b) and (c) in order to qualify as a low emission and energy-efficient vehicle in that state.

§ 601.5 Criteria for qualifying as a low emission vehicle.

Light-duty vehicles and light-duty trucks up to 8500 lbs. GVWR must be certified by the U.S. Environmental Protection Agency as meeting emission standards that are as or more stringent than the Tier 2 Bin 5 emission standard as specified in Table S04–1 of 40 CFR 86.1811–04.

§ 601.6 Criteria for qualifying as an energy-efficient vehicle.

Light-duty vehicles and light-duty trucks up to 8500 lbs. GVWR must be certified by the U.S. Environmental Protection Agency as meeting the criteria of either paragraph (a) or (b) of this section:

(a) It is an alternative fuel vehicle. This does not include flexible-fuel or dual-fuel vehicles.

(b) It meets one of the unadjusted fuel economy criteria in this paragraph:

(1) The unadjusted city fuel economy of the vehicle must be at least 50 percent higher than the city fuel economy of a comparable gasoline-fueled vehicle, as determined in § 601.7; or

(2) The unadjusted combined city-highway fuel economy of the vehicle must be at least 25 percent higher than the unadjusted combined city-highway fuel economy of a comparable gasoline-fueled vehicle, as determined in § 601.8.

§ 601.7 Criteria for determining a comparable gasoline-fueled vehicle based upon unadjusted city fuel economy.

(a) For hybrid vehicles with a similar gasoline counterpart (e.g. same make/model), the Administrator will compare the unadjusted city fuel economy value as determined under 40 CFR 600.207–93 of a candidate hybrid vehicle, to the unadjusted city fuel economy value of the similar gasoline counterpart.

(b) For hybrid vehicles with no similar gasoline counterpart, the Administrator will determine the candidate vehicle by calculating the median unadjusted city fuel economy values for all gasoline vehicles in the same comparable vehicle class as defined in EPA's annual Fuel Economy Guide, which is jointly published by EPA and DOE. The Administrator will then compare the unadjusted city fuel economy value of the candidate hybrid vehicle, as determined under 40 CFR 600.207–93, to the median unadjusted city fuel economy value for the comparison gasoline vehicle in same vehicle class.

§ 601.8 Criteria for determining a comparable gasoline-fueled vehicle based upon the unadjusted combined city-highway fuel economy.

(a) For hybrid vehicles with a similar gasoline counterpart (e.g. same make/model), the Administrator will compare the unadjusted combined city-highway fuel economy value of the candidate hybrid vehicle, as determined under 40 CFR 600.207–93, to the unadjusted combined city-highway fuel economy value of the similar gasoline counterpart.

(b) For hybrid vehicles with no similar gasoline counterpart, the Administrator will determine the candidate vehicle by calculating the median unadjusted combined city-highway fuel economy values for all gasoline vehicles in the same comparable vehicle class as used in the annual Fuel Economy Guide published jointly by EPA and the Department of Energy. The Administrator will then compare the unadjusted combined city-highway fuel economy value of the candidate hybrid vehicle, as determined under 40 CFR 600.207–93, to the median unadjusted combined city-highway fuel economy value for the comparison gasoline vehicle in same vehicle class.

§ 601.9 How to determine if a candidate vehicle meets the ''energy-efficient'' criteria based on fuel economy.

(a) The Administrator will compare the candidate vehicle's unadjusted city fuel economy and unadjusted combined city-highway fuel economy to the city fuel economy values and combined-city highway fuel economy values for the applicable gasoline comparable vehicle as described in §§ 601.7 and 601.8.

(b) A candidate vehicle qualifies as energy-efficient if it meets either of the following fuel economy criteria:

(1) The percent increase for the unadjusted city fuel economy is greater than 50 percent over the baseline city fuel economy of the comparable vehicle; or

(2) The percent increase for the unadjusted combined city-highway fuel economy is greater than 25 percent over the baseline combined city-highway fuel economy of the comparable vehicle.

§ 601.10 Certification requirements.

The Administrator will annually certify those vehicles that qualify as low emission and energy-efficient vehicles, as determined in § 601.4 and provide a list of certified vehicles to the Department of Transportation.

§ 601.11 Labeling requirements for low emission and energy-efficient vehicles.

(a) States that elect to allow low emission and energy-efficient vehicles to use HOV facilities must label low emission and energy-efficient vehicles for usage in HOV facilities in a manner that allows state enforcement officials to easily identify these vehicles.

(b) States with existing programs to allow the use of low emission and energy-efficient vehicles in HOV facilities may continue to use the labels they have designed for use in such programs, as long as they meet the other requirements of this section. States without labels must develop labels based on existing formats, i.e., decals or license plates, and the criteria in § 601.11.

(c) States are responsible for printing and/or distributing the labels and may charge a registration fee for issuing a label to an owner.

(d) Labels must identify the vehicle as low emission and energy-efficient by such means as specific wording and/or color coding.

(e) Labels must contain an identifier that is unique to the specific vehicle such that they could not be transferred.

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