

## Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

## Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR

1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09–001 to read as follows:

### § 165.T09–001 Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan.

(a) *Location.* The following area is a security zone: All waters and adjacent shoreline encompassed by the following coordinates starting at 43°49.845' N, 087°43.079' W; then east to 43°49.28' N, 087°42.93' W; then north to 43°52.591' N, 087°43.426' W; then going west to 43°52.05' N, 087°43.33' W; then following the shoreline back to point of origin (NAD 83).

(b) *Enforcement period.* This section will be enforced daily between the hours of 7 a.m. and 8 p.m., from 7 a.m. on August 9, 2004, until 8 p.m. on August 17, 2004.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by Captain of the Port Milwaukee.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747–7155 or on VHF channel 16 or VHF channel 21A to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

Dated: March 15, 2004.

**H.M. Hamilton,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

[OAR–2003–0214, FRL–7640–3]

### Petition to Amend Fuel Economy Testing and Calculation Procedures; Request for Comments

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

**ACTION:** Notice of petition for rulemaking.

**SUMMARY:** EPA has received a petition from Bluewater Network requesting rulemaking to "revise the test procedures, calculation methods and/or correction factors employed in the calculations used to determine the fuel economy information relayed to

consumers and policy makers so that they more accurately reflect the actual, real-world fuel economy that vehicles are achieving on the road." Bluewater Network contends that EPA's fuel economy estimates do not accurately reflect results achieved in actual on-road operation; more accurate estimates would benefit both consumers and those involved in setting national energy policy. Before acting on the petition, EPA would like to solicit information and comments from other interested parties.

**DATES:** In order to receive full consideration, comments should be submitted by July 27, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Holly Pugliese, 2000 Traverwood DR, Ann Arbor MI 48105. (734) 214–4288; [harrison.dan@epa.gov](mailto:harrison.dan@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. How Can I Get Copies Of Related Information ?

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0214. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1744.

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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

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. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. 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.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OAR-2003-0214. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epamail.epa.gov*, Attention Docket ID No. OAR-2003-0214. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD-ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460], Attention: Docket ID No. OAR-2003-0214.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room

B102, 1301 Constitution Ave., NW., Washington, DC, Attention: Docket ID No. OAR-2003-0214. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

#### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD-ROM, 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided

the name, date, and **Federal Register** citation related to your comments.

## II. History of EPA's Fuel Economy Program

The Federal Government began regulating vehicle exhaust emissions in the late 1960's. At that time, fuel economy was not considered an area of concern. However, the fuel shortage crisis in 1973 placed an urgent focus on fuel efficiency, and created a new demand for accurate and comparable fuel economy information.

In evaluating how to accomplish this, it was determined that the data collected during EPA's vehicle emission test could be used to calculate a "city" fuel economy estimate. The same methods for calculating vehicle emission, involving determining the volume and composition of various components in the exhaust, could be used to calculate the quantity of fuel consumed. At the time of the 1973 fuel shortage crisis, the emission test data from 1974 models had already been collected by EPA. Thus, it was relatively simple to use that data to calculate the fuel economy for those vehicles and compile that information into the first "Fuel Economy Guide". Because the data was collected under tightly controlled laboratory conditions, it allowed for comparisons amongst the different vehicle models. Moreover, it was an efficient method for vehicle manufacturers, since a single test could serve two purposes—emission and fuel economy measurements.

The downside of using the data collected for regulation of exhaust emissions was that it encompassed only one type of driving: urban stop-and-go at lower average speeds. Higher speed highway driving was not simulated for the emissions test. EPA responded to this concern by establishing a separate "highway" driving test that simulated sustained moderate speed operation typical of an urban highway.

In 1975 Congress passed the Energy Policy and Conservation Act (EPCA), Public Law 94-163. EPCA established fuel economy labeling information requirements and Corporate Average Fuel Economy (CAFE) standards, and was based on EPA's voluntary program. It also codified the use of the—"highway" driving cycle. For vehicle labeling, it required that EPA's fuel economy test results be posted on a label affixed to all new cars and light trucks, and that the label values for those vehicles be published in an annual consumer booklet, which is known as the Fuel Economy Guide. (Fuel Economy Guides for the present and past model years are available at

[www.fueleconomy.gov](http://www.fueleconomy.gov); the fuel economy estimates are also included in EPA's Green Vehicle Guide, [www.epa.gov/greenvehicles](http://www.epa.gov/greenvehicles).)

Shortly after the fuel economy labeling program was established, EPA began receiving consumer complaints that they were not achieving their "city" and "highway" fuel economy label values during actual on-road operation. EPA determined that the label values allowed relative comparisons from one vehicle to another but were less effective at estimating the actual mileage of in-use vehicles. This was due to the differences between the strictly controlled laboratory conditions and the real-world conditions that could impact individual experiences with fuel economy (e.g. extreme climate conditions, driving habits, lack of proper maintenance, higher driving speeds, severe traffic congestion, etc.). Many of these factors tend to lower fuel economy compared to the laboratory test conditions used by EPA when measuring vehicle fuel economy. In response to this concern, EPA evaluated the data available at the time on in-use fuel economy and established adjustment factors which reduced the "city" estimate by 10 percent and the "highway" estimate by 22 percent. (49 FR 13832, April 6, 1984). The number of consumer complaints declined significantly after the adjustment factors became effective. These adjusted results are currently used for the fuel economy values posted on vehicle labels and in the Fuel Economy Guide.

## III. Bluewater Network's Petition

The petition submitted to EPA from Bluewater Network, San Francisco CA, concerns the accuracy of fuel economy label values. Bluewater Network believes that despite the adjustments made to the city and highway fuel economy values, EPA's fuel economy label values still overstate what consumers actually achieve. Bluewater Network contends that the primary causes for this discrepancy are increased highway speeds, a higher proportion of urban driving and greater city traffic congestion which have occurred since EPA's procedures and adjustment factors were established. They have requested that EPA issue a rulemaking to revise its test procedures to more accurately reflect what the average consumer will achieve.

The Bluewater Network petition was addressed to both EPA and the Department of Transportation (DOT). Both EPA and the DOT's National Highway Traffic Safety Administration (NHTSA) have specific statutorily defined roles regarding vehicle fuel

economy. (See Energy Policy and Conservation Act, 49 U.S.C. 32901 *et seq.*) By this Notice, EPA is soliciting comment on the petition, specifically on the accuracy of fuel economy label values.

Bluewater Network's complete petition is available from their Web site, the docket or from the individual listed under **FOR FURTHER INFORMATION CONTACT** above.

## Request for Comments

EPA is soliciting comments on Bluewater Network's petition regarding fuel economy information in order to assist EPA in determining whether to grant or deny the petition. Comments from all interested parties are requested concerning EPA regulations implementing the fuel economy program as discussed in the petition and other related fuel economy information issues.

EPA is specifically requesting comments on whether current national driving patterns have changed in a manner that directionally impacts fuel economy. We also request the submission of any recent data that compares in-use fuel economy with the EPA city and highway label values, including data from vehicles operated on gasoline, diesel, and alternative fuels (such as CNG and LPG), and hybrid electric vehicles. Diesel and alternative fuel passenger cars and light trucks were not common in the early 1980's and therefore were not represented in the data used to determine the existing adjustment factors. Similarly, hybrid vehicles did not exist at that time. Also requested is information and/or data about how any specific conditions that may have an impact on fuel economy, such as air conditioning usage, road conditions, driving patterns, driving habits, etc., may have changed over time. Finally, we request information on why any changes in those conditions could have an impact on fuel economy. Please send all comments to the address indicated above under **SUPPLEMENTARY INFORMATION** above.

Dated: March 17, 2004.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

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