

*Example. (i) Facts.* On March 1, 1998, X issues a contract to E for cash. The contract provides that beginning on April 1, 1998, X will distribute to E a fixed amount of cash each month for E's life but that no distributions will be made after April 1, 2018. On April 1, 1998, E's life expectancy is 9 years.

(ii) *Analysis.* A maximum payout provision exists because if E survives beyond April 1, 2018, E will receive no further distributions under the contract. The period of time from the annuity starting date (April 1, 1998) to the termination date (April 1, 2018) is 20 years. Because this 20-year period is more than twice as long as E's life expectancy on April 1, 1998, the maximum payout provision qualifies for the exception in paragraph (j)(6)(iii) of this section. Accordingly, the existence of this maximum payout provision does not prevent the contract from being described in section 1275(a)(1)(B)(i).

(7) *Decreasing payout provision—(i) General rule.* If the amount of distributions during any contract year (other than the last year during which distributions are made) may be less than the amount of distributions during the preceding year, this possibility can significantly reduce the probability that total distributions under the contract will increase commensurately with the longevity of the annuitant (or annuitants). Thus, the existence of this possibility causes the contract to fail to be described in section 1275(a)(1)(B)(i).

(ii) *Exception for certain variable distributions.* Notwithstanding paragraph (j)(7)(i) of this section, if an annuity contract provides that the amount of each distribution must increase and decrease in accordance with investment experience, cost of living indices, or similar fluctuating criteria, then the possibility that the amount of a distribution may decrease for this reason does not significantly reduce the probability that the distributions under the contract will increase commensurately with the longevity of the annuitant (or annuitants).

(iii) *Examples.* The following examples illustrate the rules of this paragraph (j)(7):

*Example 1. (i) Facts.* On March 1, 1998, X issues a contract to F for \$100,000. The contract provides that beginning on March 1, 1999, X will make distributions to F each year until F's death. Prior to March 1, 2009, distributions are to be made at a rate of \$12,000 per year. Beginning on March 1, 2009, distributions are to be made at a rate of \$3,000 per year.

(ii) *Analysis.* If F is alive in 2009, the amount distributed in 2009 (\$3,000) will be less than the amount distributed in 2008 (\$12,000). The exception in paragraph (j)(7)(ii) of this section does not apply. The decrease in the amount of any distributions made on or after March 1, 2009, can

significantly reduce the probability that total distributions under the contract will increase commensurately with F's longevity. Thus, the contract fails to be described in section 1275(a)(1)(B)(i).

*Example 2. (i) Facts.* On March 1, 1998, X issues a contract to G for cash. The contract provides that, effective on any date G chooses (the annuity starting date), X will begin monthly distributions to G for G's life. Prior to the annuity starting date, the account value of the contract reflects the investment return, including changes in the market value, of an identifiable pool of assets. When G chooses the annuity starting date, G must also choose whether the distributions are to be fixed or variable. If fixed, the amount of each monthly distribution will remain constant at an amount that is no less than an amount based on the contract's account value as of the annuity starting date, G's age on that date, and permanent purchase rate guarantees contained in the contract. If variable, the monthly distributions will fluctuate to reflect the investment return, including changes in the market value, of the pool of assets. The monthly distributions under the contract will not otherwise decline from year to year.

(ii) *Analysis.* Because the only possible year-to-year declines in annuity distributions are described in paragraph (j)(7)(ii) of this section, the possibility that the amount of distributions may decline from the previous year does not reduce the probability that total distributions under the contract will increase commensurately with G's longevity. Thus, the potential fluctuation in the annuity distributions does not cause the contract to fail to be described in section 1275(a)(1)(B)(i).

(8) *Effective dates—(i) In general.* Except as provided in paragraph (j)(8)(ii) and (iii) of this section, this paragraph (j) is applicable for interest accruals on or after February 9, 1998 on annuity contracts held on or after February 9, 1998.

(ii) *Grandfathered contracts.* This paragraph (j) does not apply to an annuity contract that was purchased before April 7, 1995. For purposes of this paragraph (j)(8), if any additional investment in such a contract is made on or after April 7, 1995, and the additional investment is not required to be made under a binding contractual obligation that was entered into before April 7, 1995, then the additional investment is treated as the purchase of a contract after April 7, 1995.

(iii) *Contracts consistent with the provisions of FI-33-94, published at 1995-1 C.B. 920. See § 601.601(d)(2)(ii)(b) of this chapter.* This paragraph (j) does not apply to a contract purchased on or after April 7, 1995, and before February 9, 1998, if all payments under the contract are periodic payments that are made at least annually for the life (or lives) of one or more individuals, do not increase at any time during the term of the contract, and are part of a series of distributions that

begins within one year of the date of the initial investment in the contract. An annuity contract that is otherwise described in the preceding sentence does not fail to be described therein merely because it also provides for a payment (or payments) made by reason of the death of one or more individuals.

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: December 19, 1997.

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 9

[FRL-5943-2]

### OMB Approval Numbers Under the Paperwork Reduction Act

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

**ACTION:** Final rule.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Regulation of Fuels and Fuel Additives, Standards for Reformulated and Conventional Gasoline.

**EFFECTIVE DATE:** This final rule is effective February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ervin Pickell (telephone: (303) 969-6485).

**SUPPLEMENTARY INFORMATION:** EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various EPA regulations. Today's amendment updates the table to list those information requirements promulgated in the rulemaking Fuels and Fuel Additives, Standards for Reformulated and Conventional Gasoline which appeared in the **Federal Register** on February 16, 1994 (59 FR 7716-7878). The information collection associated with this rule was approved by OMB on March 18, 1994 and a notice of OMB approval, which displayed the OMB No. 2060-0277, was published in the **Federal Register** on April 18, 1994 (59 FR 18392). The affected regulations are codified at 40 Code of Federal Regulations (CFR) part 80 and part 9. EPA will continue to present OMB control numbers in a consolidated table

format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. The notice in the **Federal Register** of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

Under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act.

#### Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements, Regulation of fuels and fuel additives.

Dated: December 22, 1997.

**Sylvia K. Lowrance,**

*Principal Deputy Assistant Administrator,  
Office of Enforcement and Compliance Assurance.*

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

#### PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding in numerical order the new entries to the table under the indicated heading to read as follows:

#### § 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
* * * * *	
Regulation of Fuels and Fuel Additives	
* * * * *	
80.40 .....	2060–0277
80.46 .....	2060–0277
80.65 .....	2060–0277
80.68–80.69 .....	2060–0277
80.74–80.77 .....	2060–0277
80.79 .....	2060–0277
80.83 .....	2060–0277
80.91–80.93 .....	2060–0277
80.101–80.106 .....	2060–0277
80.125 .....	2060–0277
80.127–80.130 .....	2060–0277
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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[OH111–1a; FRL–5947–8]

#### Approval and Promulgation of Maintenance Plan Revision; Ohio

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) is approving through "direct final" procedure, an October 20, 1997, request from Ohio, for a State Implementation Plan (SIP) maintenance plan revision for the Jefferson County ozone maintenance area. The maintenance plan revision is allocating to the mobile source emission budget for transportation conformity purposes a portion of the existing safety margin. The safety margin is the difference between the attainment inventory level of the total emissions and the projected levels of the total emissions in the final year of the maintenance plan.

**DATES:** This "direct final" rule is effective on March 9, 1998, unless USEPA receives significant written adverse or critical comments by February 9, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Clean Air Act in section 176(c) requires conformity of activities to an implementation plan's purpose of attaining and maintaining the National Ambient Air Quality Standards. On November 24, 1993, the USEPA promulgated a final rule establishing criteria and procedures for determining conformity of transportation plans, programs and projects funded or approved under Title 23 U.S.C. of the Federal Transit Act.

The State of Ohio finalized and adopted State transportation conformity rules on August 1, 1995, the rules