

operations, adopted by the Secretary of the Environment on March 9, 1991, effective May 8, 1991.

(ii) Additional material.

(A) Remainder of April 5, 1991 State submittal pertaining to COMAR 26.11.13.04, loading operations.

(111) Revisions to the Maryland State Implementation Plan submitted on April 2, 1992 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 2, 1992 from the Maryland Department of the Environment transmitting additions, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Revisions to COMAR

26.11.13.04A(3), pertaining to test procedures for bulk gasoline terminals, adopted by the Secretary of the Environment on January 20, 1992, effective February 17, 1992.

(ii) Additional material.

(A) Remainder of April 2, 1992 State submittal pertaining to COMAR 26.11.13.04A(3), test procedures for bulk gasoline terminals.

(112) Revisions to the Maryland State Implementation Plan submitted on January 18, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of January 18, 1993 from the Maryland Department of the Environment transmitting additions, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Revisions to COMAR

26.11.13.04A(3), pertaining to test procedures for bulk gasoline terminals, adopted by the Secretary of the Environment on January 18, 1993, effective February 15, 1993.

(ii) Additional material.

(A) Remainder of January 18, 1993 State submittal pertaining to COMAR 26.11.13.04A(3), test procedures for bulk gasoline terminals.

(113) Revisions to the Maryland State Implementation Plan submitted on June 8, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 8, 1993 from the Maryland Department of the Environment transmitting additions, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, COMAR 26.11.

(B) The following revisions to the provisions of COMAR 26.11, adopted by

the Secretary of the Environment on March 26, 1993, effective April 26, 1993:

(1) Amendments to COMAR 26.11.11.02B and C, pertaining to asphalt paving.

(2) Amendments to COMAR 26.11.13.01B(1), the definition for the term bulk gasoline plant.

(3) Amendments to COMAR 26.11.13.02, pertaining to applicability and exemptions.

(4) Amendments to COMAR 26.11.13.04, pertaining to loading operations.

(5) The addition of new COMAR 26.11.13.07, pertaining to plans for compliance.

(6) Amendments to COMAR 26.11.19.01B(4), the definition for the term major stationary source of VOC.

(7) Amendments to COMAR 26.11.19.02A, F, and H, pertaining to applicability, reporting and recordkeeping, and plans for compliance, respectively.

(8) Amendments to COMAR 26.11.19.10, pertaining to graphic arts.

(ii) Additional material.

(A) Remainder of June 8, 1993 State submittal pertaining to COMAR 26.11.11.02B and C, COMAR 26.11.13.01B(1), COMAR 26.11.13.02, COMAR 26.11.13.04, COMAR 26.11.13.07, COMAR 26.11.19.01B(4), COMAR 26.11.19.02A, F, and H, and COMAR 26.11.19.10.

(114) Revisions to the Maryland State Implementation Plan submitted on July 19, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 19, 1993 from the Maryland Department of the Environment transmitting additions, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, COMAR 26.11.

(B) Revisions to COMAR 26.11.13.04A, pertaining to bulk gasoline terminals, adopted by the Secretary of the Environment on June 25, 1993, effective July 19, 1993.

(ii) Additional material.

(A) Remainder of July 19, 1993 State submittal pertaining to COMAR 26.11.13.04A, bulk gasoline terminals.

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BILLING CODE 6560-50-P

## 40 CFR Part 52

[Region II Docket No. 138, NY20-1-6729a, FRL-5124-5]

### Approval and Promulgation of Implementation Plans; State of New York; Clean Fuel Fleet Opt Out

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** In this action, the Environmental Protection Agency (EPA) is announcing partial approval and partial disapproval of the State Implementation Plan submitted by the State of New York for the purpose of meeting the requirement to submit the Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act. EPA is approving the State's plans for implementing a substitute program to opt out of the light duty vehicle portion of the CFFP and disapproving the State's commitment to adopt a CFFP for heavy duty vehicles at a future date.

**DATES:** This final rule is effective on March 7, 1995 unless adverse or critical comments are received by February 6, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** All comments should be addressed to:

William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Air Docket 6102, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1034A, New York, New York 10278.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Moltzen, Environmental Engineer, Technical Evaluation Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264-2517.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 182(c)(4)(A) of the Clean Air Act requires certain States, including

New York, to submit for EPA approval a State Implementation Plan (SIP) revision that includes measures to implement the Clean Fuel Fleet program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. The program applies in the New York portion of the New York-Northern New Jersey-Long Island nonattainment area beginning in 1999. Section 182(c)(4)(B) of the Act allows states to "opt out" of the CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves long-term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

The State of New York submitted on November 13, 1992 a SIP revision which committed it to submit a substitute program or programs in lieu of the CFFP, or the CFFP itself, by May 15, 1994. Prior to EPA action on New York's commitment, the Court of Appeals for the District of Columbia ruled that EPA's conditional approval policy in general was contrary to law. [*NRDC v. EPA*, 22 F.3d. 1125 (D.C. Cir. 1994)]. The court held that a bare commitment from a state was not sufficient to warrant conditional approval from EPA under section 110(k)(4) of the Act. Therefore, following this decision, EPA could not approve New York's commitment of November 1992.

However, in fashioning a remedy for EPA's improper use of its conditional approval authority, the *NRDC* Appellate court did not want to penalize the states for their reliance on EPA's actions. EPA also does not believe that New York should lose its opportunity to opt out of the CFFP with a substitute program that meets the requirements of section 182(c)(4)(B) because of EPA's failure to act on New York's commitment, especially since New York has, in reliance on EPA advice, submitted such a substitute program for EPA approval prior to any EPA action on the commitment.

Therefore, EPA will consider all submissions made thus far by the State that are intended to substitute for the

CFFP, including that of May 15, 1994 which transmitted the New York State Code of Rules and Regulations Part 218, the State's low emission vehicle program and the submission of August 9, 1994, supplementing the May 1994 submittal, in conjunction with the November 1992 commitment.

The Act requires states to observe certain procedural requirements in developing implementation plan revisions for submission to EPA. Sections 110(a)(2) and 172(c)(7) of the Act require states to provide reasonable notice and opportunity for public comment before accepting the submitted measures. Section 110(1) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP provisions.

EPA must also determine whether a state's submittal is complete before taking further action on the submittal. See section 110(k)(1). EPA's completeness criteria for SIP submittals are set out in 40 CFR Part 51, Appendix V (1993).

## II. State Submittal

New York submitted a SIP revision on May 15, 1994 (and supplemented it on August 9, 1994) which substituted a low emission vehicle (LEV) program for the light duty vehicle portion of the CFFP. The State adopted the LEV program, New York's Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," on April 28, 1992. New York held public hearings on February 8 and 9, 1993 and on January 11, 1994 to entertain public comment on its 1992 and 1993 SIP revisions, respectively; these hearings included the State's proposal to opt out of the CFFP with LEV as a substitute program. EPA reviewed the State's submission for completeness, in accordance with the completeness criteria, and on September 1, 1994 found the submittals to be complete. EPA notified New York in writing of this finding.

New York's submittal divides the CFFP into two separate requirements; that portion which applies to light duty fleet vehicles, and a second requirement for heavy duty fleet vehicles. This interpretation is provided for in sections 182 and 246 of the Clean Air Act (see part III. of this notice, "Analysis of State Submission"). The State exercised its choice to substitute enough emission reduction credit from its LEV program for the light duty portion of the CFFP. New York has not submitted a substitute for the heavy duty portion of the CFFP. Nor has the State adopted the heavy duty fleet program.

## III. Analysis of State Submission

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a CFFP to "opt out" of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program result in emission reductions equal to or greater than does the CFFP. Also, EPA can only approve such substitute programs that consist exclusively of provisions other than those required under the Clean Air Act for the area. New York's LEV program satisfies both of these requirements as they pertain to the light duty portion of the fleet program.

Section 182(c)(4)(B) states that a measure can be substituted for all or a portion of the CFFP, and such a substitute program will be approvable if it achieves long-term emission reductions equivalent to those that would have been achieved by the portion of the CFFP for which the measure is to be substituted. Section 246 implies that the CFFP can be subdivided into a light duty vehicle portion (up to 8,500 pounds gross vehicle weight rating (GVWR)) and a heavy duty vehicle portion (from 8,501 pounds GVWR to 26,000 pounds GVWR). This is made apparent most notably by section 246(f)(2)(B), which restricts the use of Clean Fuel Fleet credits generated for either light or heavy duty fleet vehicles to those classes, respectively. Credit trading between weight classes is prohibited.

In recognizing the severable nature of the CFFP, New York has chosen to submit a substitute measure, the State's LEV program, that is intended to substitute for only the light duty portion of the CFFP. The State must therefore implement a heavy duty CFFP which also complies with section 246 of the Clean Air Act. New York is currently required by state law to adopt and implement a heavy duty fleet program and consequently has not chosen to opt-out of the heavy duty portion of the CFFP. However, the State has not yet adopted a heavy duty fleet program (New York's Clean Air Compliance Act called for adoption of the heavy duty fleet program by May 15, 1994).

New York, in exercising its option under section 177 of the Clean Air Act, has adopted a LEV program which affects all new light duty vehicles, specifically passenger cars and light duty trucks under 6,000 lbs. GVWR for vehicle model years 1994 and later. The LEV program is a far reaching, technology-forcing program designed to improve the emissions performance of vehicles over a long period of time. The

LEV program sets forth five different sets of emission standards, and vehicle manufacturers may market any combination of vehicles provided that the annual average emissions of each manufacturer's fleet complies with a fleet average limit that becomes more stringent each year. In addition, New York's LEV program requires manufacturers to begin to market a fixed percentage of zero emission vehicles (ZEVs) in model year 1998. The ZEV requirement will help assure that the LEV program will achieve a significant amount of ozone forming emission reductions, beyond those achieved by the light duty portion of the CFFP.

New York's LEV program will assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized through the light duty portion of a CFFP. Moreover, a light duty CFFP would affect a much smaller subset of vehicles than the LEV program, since the fleet vehicles affected by the CFFP would be limited to a set yearly percentage of new vehicles purchased by fleet operators of covered fleets, restricted to the New York State portion of the New York-Northern New Jersey-Long Island nonattainment area. The LEV program is a statewide program affecting the sale of all light duty vehicles. The LEV program has fleet average emission standards that are comparable to those established by the Clean Air Act for clean fuel fleet vehicles in the CFFP. With respect to long term emission standards for non-methane organic gases (NMOG), the CFFP requires that 70% of new light duty fleet vehicles purchased annually in covered fleets have a standard of 0.075 grams per mile (model year 2000 and later), while the LEV program requires that the long term NMOG standard for 100% of all light duty vehicles be no more than 0.062 grams per mile (model year 2003 and later).

While New York's LEV program does not cover vehicles in the weight class range of 6,000 to 8,500 pounds GVWR, in its SIP revision New York states that it will dedicate enough ozone forming and toxic emission reduction credit as is necessary to fully substitute for the entire light duty portion of the CFFP. Also, while the light duty portion of the CFFP covers the 6,000 to 8,500 pound vehicle range, the State still plans to adopt and implement a heavy duty fleet program, as required by its Clean Air Compliance Act, which will include this vehicle weight range.

The Clean Air Act also requires New York to adopt a CFFP that applies to heavy duty vehicles. The long term emission standard for heavy duty

vehicles participating in the CFFP, independent of fuel type, is a combined non-methane hydrocarbon (NMHC) plus nitrogen oxide (NOx) standard of 3.8 grams per brake horsepower hour. This is about a 50 percent reduction from 1994 heavy duty diesel engine requirements and would apply to 50 percent of affected heavy duty fleet vehicles for model year 2000 and later. New York has not yet adopted a heavy duty CFFP, nor has it submitted an adequate substitute measure for the heavy duty portion of the CFFP. Although the State has legislative authority to adopt and implement the heavy duty fleet program, EPA may not approve a revision that lacks adopted measures.

As a result of these deficiencies, EPA finds, pursuant to 40 CFR section 52.31(c)(2), that New York has failed to meet one or more of the elements of submission required by the Act.

This notice initiates the sanction process, mandated by section 179(a)(2) of the Clean Air Act, as a result of the partial disapproval of the New York SIP described in this notice. Section 179(b) of the Clean Air Act prescribes certain mandatory sanctions that the Administrator must impose upon a finding that a SIP revision submitted by a state is not approvable. The two sanctions identified in the Clean Air Act are: a requirement for a two-for-one emissions offsets in nonattainment areas for construction of major new and modified sources, and a cutoff of federal funding for certain highway projects. The Administrator must impose the first sanction no later than eighteen months of the date of the finding if the deficiency has not been corrected and the second sanction no later than six months thereafter. The offset sanction would apply at eighteen months and the highway funding sanction at twenty-four months, although the Administrator can change the sequence of the sanctions and accelerate their effective date.

EPA, auto manufacturers, and states are currently considering the possibility of developing a voluntary national LEV-equivalent motor vehicle emission control program. See 59 FR 48664 (9/22/94) and 59 FR 53396 (10/24/94). EPA does not expect that this approval will impede the development or implementation of such a program. If New York were to participate in a LEV-equivalent program, it would have the opportunity to revise its clean fuel fleet substitute program.

#### IV. Summary of Action

In this rule, EPA is taking final action to partially approve and partially

disapprove New York's SIP revision submitted to fulfill the Clean Fuel Fleet requirements of the Clean Air Act. The State's adopted Part 218 implementing the low emission vehicle program is an adequate substitute for the light duty vehicle portion of the CFFP under section 182(c)(4).

The State has failed to fulfill the requirement to submit the remaining portion of the CFFP, the heavy duty vehicle portion. EPA is disapproving this portion of the State's submittal because it does not consist of a State-adopted regulation.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing a notice and comment period to allow for adverse or critical comments to be considered. Thus, this direct final action will be effective March 7, 1995 unless, by February 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective March 7, 1995. (See 47 FR 27073 and 59 FR 24059).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v US EPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

This rule may be withdrawn by EPA pursuant to procedures described in this **Federal Register** notice. Before filing a petition for review, potential petitioners under section 307(b)(1) of the Act are cautioned to determine whether EPA has withdrawn the rule.

Under section 307(b)(1) of the Act, petitions for judicial review of this rule must be filed in the United States Court

of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

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

Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 21, 1994.

**William J. Muszynski**,  
*Acting Regional Administrator.*

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

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart HH—New York**

2. Section 52.1670 is amended by adding new paragraph (c)(88) to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

(88) Revision to the New York State Implementation Plan (SIP) for ozone, submitting a low emission vehicle program for a portion of the Clean Fuel Fleet program, dated May 15, 1994 and August 9, 1994 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference. Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," effective May 28, 1992.

(ii) Additional material.

May 1994 NYSDEC Clean Fuel Fleet Program description.

3. Section 52.1679 is amended by adding, in numerical order, a new entry Part 218 to the table to read as follows:

**§ 52.1679 EPA-approved New York State regulations.**

New York State regulation	State effective date	Latest EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *
Part 218 "Emission Standards for Motor Vehicles and Motor Vehicle Engines".	5/28/92 .....	January 6, 1995 [60 FR 2025] .....	
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[FR Doc. 95-288 Filed 1-5-95; 8:45 am]  
BILLING CODE 6560-50-P

**40 CFR Part 52**

[CA 71-7-6801; FRL-5120-5]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District and San Diego County Air Pollution Control District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on June 14, 1994. The revisions concern rules from the following districts: Santa Barbara County Air Pollution Control District (SBCAPCD) and San Diego County Air Pollution Control District (SDCAPCD). This approval action will incorporate

these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from polyester resin operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**EFFECTIVE DATE:** This final rule is effective on February 6, 1995.

**ADDRESSES:** Copies of the submitted rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105  
Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460  
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B-23 Goleta, CA 93117  
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 14, 1994 in 59 FR 30562, EPA proposed to approve the following rules into the California SIP: SBCAPCD's Rule