

and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because this federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Therefore, because this proposed action does not impose any new requirements, the Administrator certifies 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 CAA, preparation of a 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. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate 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. Under section 205, EPA must select the

most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in expenditures of \$100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector in any one year. This proposed Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this proposed action.

Dated: November 14, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97-30517 Filed 11-19-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ29-1-175; FRL-5925-5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan revision submitted by the State of New Jersey 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 (Act). EPA is proposing to approve the State's plan for implementing a substitute program to opt out of the CFFP.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: All comments should be addressed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866.

Copies of the State submittals are available at the following addresses for

inspection during normal business hours:

Environmental Protection Agency,
Region 2 Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866

New Jersey Department of
Environmental Protection, Bureau of
Air Quality Planning, 401 East State
Street, CN027, Trenton, New Jersey
08625

FOR FURTHER INFORMATION CONTACT:

Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires states containing areas designated as severe ozone nonattainment areas, including New Jersey, 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. A CFFP meeting federal requirements would be a state-enforced program which requires covered fleets to assure that an annually increasing percentage of new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. In New Jersey, the program would apply in the State's portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and in New Jersey's portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

The federal CFFP is divided into two components. The first component is a light duty (LD) CFFP which applies to covered fleets of passenger cars and trucks of gross vehicle weight rating (GVWR) of 6,000 pounds and less, and trucks between 6,000 and 8,500 pounds GVWR. Covered fleets which fall under the LD CFFP are required to assure that 30 percent of new purchases are clean vehicles in the first year of the program, 50 percent in the second year and 70 percent in the third and subsequent years.

The second component is a heavy duty (HD) CFFP which applies to covered fleets of trucks over 8,500 pounds GVWR and below 26,000

pounds GVWR. The HD CFFP requires that 50 percent of covered fleets' new purchases be clean fueled vehicles in the first and subsequent years.

Under the federal CFFP, the vehicle exhaust emission standards for LD vehicles are equivalent to those established by the California Air Resources Board (CARB) as LD low emission vehicles (LEVs), for use in the California LEV program (discussed in more detail in section II. of this notice). In addition to LEVs, CARB certification exists for transitional LEVs (TLEVs), ultra LEVs (ULEVs) and zero emission vehicles (ZEVs). In addition, under the federal CFFP, clean vehicle emission standards are defined for inherently low emitting vehicles (ILEVs) and for medium and heavy duty vehicles (both of which are covered within the HD CFFP weight category). For further information regarding emission standards associated with all of the clean fuel vehicles which are applicable under the LEV program and the federal CFFP, the reader is referred to the CFFP final rule, published on March 1, 1993 at 58 FR 11888.

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.

New Jersey, in its 1992 SIP revision chose to preserve its right to opt out of the CFFP but did not indicate a specific substitute measure or measures which was to be used for that purpose. Prior to EPA action on this commitment, the Court of Appeals for the District of Columbia ruled that EPA's conditional approval policy with respect to state commitments 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 Jersey's November 1992 commitment to opt out of the CFFP.

However, in fashioning a remedy for EPA's improper use of its conditional approval authority, the NRDC Appellate court did not want to penalize states for their reliance on EPA's actions.

EPA also does not believe that New Jersey 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 inability to act on New Jersey's commitment, especially since New Jersey has since submitted such a substitute program for EPA approval.

Therefore, EPA is considering all relevant submissions made thus far by the State that are intended to substitute for the CFFP.

The Region received from New Jersey a proposed SIP revision dated May 15, 1994. The submittal, consisting of New Jersey's then proposed LEV program, was intended to fulfill the State's CFFP obligations. However, because the Clean Air Act requires SIP revisions to consist of adopted measures, and because the opt out measure was only in the proposal stage, EPA transmitted a finding of failure to submit the required SIP revision in a letter to the State on October 3, 1994. New Jersey then had 18 months from the date of the letter to submit the required SIP before sanctions were to take effect.

On February 15, 1996, in order to cure the finding of failure to submit, New Jersey submitted its New Jersey Clean Fleets (NJCF) program as a substitute for the federal CFFP. As described earlier, the federal CFFP is a state-enforced program which requires that operators of covered vehicle fleets assure that a percentage of their new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. By contrast, the NJCF program is an essentially voluntary mix of incentive-based programs which are intended to spur public and private fleets within New Jersey to purchase clean, alternatively fueled vehicles (AFVs) (discussed in more detail in section III. C. of this notice).

On March 29, 1996, New Jersey supplemented the CFFP SIP revision with a letter clarifying that the NJCF program substitution includes, to the extent necessary to meet SIP obligations, New Jersey's LEV program which had been adopted by that time. Because the emissions reductions relied upon in the NJCF program will largely result from voluntary measures, the State's LEV program essentially serves the role of a "backstop" to the NJCF program. This means that in the event the NJCF program fails to achieve the emissions reductions claimed by the State, emission reductions achieved with the separate LEV program will be used by the State to account for those reductions that would have originally been realized through the federal CFFP. In that event EPA would then recognize the State's

LEV program as the effective opt out measure.

Unlike the federal CFFP, the LEV program imposes requirements on auto manufacturers and their yearly vehicle sales. New Jersey adopted a LEV regulation states that New Jersey's primary intention is to participate in the National LEV (NLEV) program (discussed in more detail in the section II. C.4. of this notice). However, EPA cannot require NLEV—it must be mutually agreed upon by the participating states and the auto manufacturers—and if NLEV fails to become effective (due to lack of such an agreement), New Jersey's regulation states that it will operate a State LEV or "California" LEV program (discussed in more detail in section II. of this notice), an option afforded states in the Clean Air Act (see Clean Air Act section 177). The NLEV and State LEV programs are similar in that where applicable, auto manufacturers must meet an average vehicle emission standard, based on the certified emission standards of all annual vehicle sales. The annual average vehicle emission standard (referred to as the non-methane organic gas (NMOG) average) increases in stringency on an annual basis. Quantitatively, NLEV or State LEV, whichever is ultimately implemented in New Jersey, will achieve long term vehicle emission reductions which are far greater than what the federal CFFP could have achieved.

Based on these provisions in the SIP revisions submitted by New Jersey on February 15, 1996 and March 29, 1996, EPA sent a letter to New Jersey on April 4, 1996 notifying the State that the finding of failure to submit had been withdrawn. New Jersey amended its NJCF SIP revision with a March 6, 1997 submittal, which included comments on the proposed SIP revision received by the State, including those received at a State-held public hearing on October 21, 1996.

The Clean Air 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 public hearing before adoption by the state and submission to EPA for approval. Section 110(1) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP revisions.

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). New Jersey's SIP revision which EPA is proposing to approve in this notice meets all of the procedural requirements and completeness criteria.

II. State Submittal

New Jersey submitted SIP revisions on February 15, 1996, March 29, 1996 and March 6, 1997 which substituted the State's NJCF program, backstopped by New Jersey's adopted and enforceable LEV program, for the federal CFFP. The adopted LEV regulation requires the implementation of a program identical to the California LEV program or, if certain triggering events occur, participation in the National LEV program (discussed in more detail in section III. C.4. of this section). The LEV program operated in California requires that each model year of vehicles produced for sale, beginning with model year 1994, be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale, meet a yearly NMOG fleet average. The California LEV fleet-average NMOG standard was 0.25 grams per mile for model year 1994. The NMOG average becomes increasingly more stringent annually, and for model year 2003 and later the standard is 0.063 grams per mile.

New Jersey held a public hearing on October 21, 1996 to entertain public comment on its federal CFFP substitute SIP revision; this hearing included the State's proposal to opt out of the CFFP with its NJCF program and LEV backstop as a substitute program.

III. Analysis of State Submission

A. Opt Out Criteria and Requirements

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 long term 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 Jersey's backstopped NJCF program satisfies both of these requirements.

B. Equivalency of Substitute

The Clean Air Act requires that any substitute for the federal CFFP must provide equivalent long term emission reductions. In its SIP revision, the State estimated the emission reductions which would be attributable to

operation of the federal CFFP in New Jersey. It is this amount of long term reduction, discussed below, which the State's substitute must achieve.

Light Duty Vehicle Analysis

New Jersey first analyzed the potential for emissions reductions to result from long term compliance with the LD vehicle portion of the federal CFFP in New Jersey. The LD vehicle purchase requirements of the federal CFFP are intended to ensure a gradual turnover of conventional LD fleet vehicles to clean LD vehicles in covered fleets. In the long term, a substantial portion of LD vehicles in covered fleets, where the program is operated, would meet the LEV (or cleaner) standard, where otherwise they would not have met those more stringent standards (*i.e.*, if the State was not also operating a LEV program as described above). In its SIP revision however, New Jersey pointed out that the LD vehicle portion of the federal CFFP, in the long term, would essentially duplicate the Statewide, more comprehensive New Jersey LEV program which has already been adopted [Adopted on November 22, 1995 at 27 N.J.R. 5016(a) (December 18, 1995), codified at N.J.A.C. 7:27-26].

In the SIP revision, New Jersey explained that its LEV program is more comprehensive than the LD portion of the federal CFFP, because it will require virtually all LD vehicles sold in New Jersey (including fleet and non-fleet vehicles) to meet, by model year 2000, the LEV standard when their total emissions are averaged. By contrast, the federal LD CFFP will only require 70 percent of new vehicle purchases in covered fleets to meet the LEV standard in the long term, a requirement which would be met through the State's LEV requirements, imposed on the vehicle manufacturers.

New Jersey also noted that its LEV program begins one year later (model year 1999) than the federal CFFP (model year 1998). The State offered the justification that in the long term however, the LEV program requirements would make up for any shortfall in LD vehicle emission reductions that might be caused by the difference in start dates. However, subsequent to the date that New Jersey made its opt out submission to EPA, EPA has determined that a one year delay of implementation of the CFFP is necessary and appropriate. The delay is needed due to a stated lack of availability of the requisite types and numbers of clean fueled vehicles in the majority of the areas which are required to implement and comply with the regulatory requirements of a CFFP. This guidance

and policy decision, which was based on input from all of the program stakeholders, was transmitted in a May 22, 1997 memo from EPA Office of Mobile Sources Director Margo Oge to EPA's Regional Air Directors. EPA anticipates publishing a rulemaking in the **Federal Register** shortly, finalizing the delay. The fact of the delay further lends equivalency to the NJCF program as a CFFP opt out, since both programs will now start at the same time.

With further examination of the relative effects of these programs, New Jersey also noted that there will still exist certain aspects of the federal LD CFFP that could result in greater emission reductions than the NJCF program on an individual LD vehicle basis. As an example, the State discussed the requirement that LEVs operate on the fuels for which they were certified to operate on, and that the federal CFFP requires that covered fleets must ensure that a certain percentage of their new vehicle purchases (both light and heavy duty) are certified to meet LEV (or cleaner) standards. By contrast, the NJCF program is voluntary (with the exception of the Energy Policy Act (EPA Act), discussed in further detail in section C.). The State again justified the equivalency claim of its opt out measure by explaining the reasons why these differences are not significant discrepancies. With respect to the loss of emission reduction benefits that would occur from gasoline-powered LEVs operating on federal reformulated gasoline (RFG) rather than the fuel that they were certified to operate on (*e.g.*, California RFG), New Jersey explained that such a loss would be relatively small in the long term. The State claims that this is true because the reductions from the federal CFFP would occur only on a per vehicle basis, and because of its anticipation that a substantial number of LEVs will be operating on alternative fuels, in the later years of the State LEV program, that are cleaner than California RFG. EPA agrees with this line of reasoning, as well as with New Jersey's assertion that the overall additional benefit of the federal CFFP's fuel requirement for LEVs would be relatively small and insignificant in the long term for those reasons.

EPA agrees with New Jersey that implementation of the federal LD CFFP, in addition to either the NLEV or the State LEV program (the State has made certain through its regulations that one or the other will be implemented), for any small incremental benefits in light of the additional administrative requirements of the federal CFFP, would be burdensome and impractical. Lastly, EPA has determined, for the reasons

stated above, that the State does not need to account explicitly for the long term emission reductions which would have been associated with a LD CFFP since those reductions are negated by operation of a LEV program.

Heavy Duty Vehicle Analysis

The heavy duty vehicle portion of the federal CFFP requires that on an annual basis, 50 percent of heavy duty fleet vehicles purchased each year must meet clean fuel vehicle emission standards. Through appropriate modeling, New Jersey has determined that the estimated emission reduction benefit that would result from applying the federal CFFP's heavy duty vehicle requirements in New Jersey would be approximately 4.5 tons per day (tpd) of VOC and NO_x combined in 2010 (modeling techniques and assumptions used to arrive at this figure are described below). New Jersey assumes in its SIP, and EPA agrees with the assumption, that modeling emission reductions out to the year 2010 is adequate for the purpose of determining the long term reductions which could be expected of the heavy duty CFFP in New Jersey. The NJCF program must achieve that amount of emission reductions within the same time frame in order to be an acceptable substitute for the federal CFFP. If it does not, as will be verified through the program emission reduction tracking system that the State committed to implement (described in more detail below), the State has also committed to use emission reduction credit generated from either the NLEV program or the State LEV program to make up any emission reduction shortfall which may result.

Modeled Reductions from the CFFP

In order to determine the level of long term emissions reductions which needs to be provided by its opt out measures, the State employed the latest version of the mobile source emission model approved by EPA, MOBILE5a. Emission factors generated by the MOBILE model were used in conjunction with proscribed CFFP calculation guidelines in EPA's June 1994 CFFP Regulatory Impact Analysis (RIA). New Jersey determined through this modeling that the long term reductions associated with the federal CFFP would equal 4.5 tons per day of NO_x and VOC combined.

C. NJCF Program Details and Goals

NJDEP has estimated that, in order to meet the Clean Air Act requirement of an approvable CFFP substitute, the NJCF program must provide emission reductions equivalent to those from approximately 50,750 medium heavy

duty certified clean fueled vehicles by 2010. NJDEP estimates that about 176 of these vehicles will come from the Clean Cities program, and the remainder from the efforts of the Incentive Development Workgroup (both of which are described below).

NJDEP has determined that in order to contribute towards the emission reductions needed for a substitute program, a medium or heavy duty vehicle must be certified by CARB to meet LEV (or cleaner) standards. For this reason New Jersey's SIP revision does not rely on emission reductions from alternative fuel vehicle (AFV) conversions to meet the target of 4.5 tons per day of NO_x and VOC combined by 2010. Furthermore, AFV conversions will comprise a relatively small percentage of total clean AFVs in use in New Jersey in the long term. EPA agrees with this conservative approach in today's proposed approval.

The NJCF program consists of the following four components: (1) Incentive Development program, (2) the Department of Energy's (DOE's) EPAct fleet requirements, (3) DOE's Clean Cities program, and 4) the Advanced Technology Vehicle (ATV) component of EPA's finalized NLEV program.

1. Incentive Development Program

The incentive development program was developed by a public/private workgroup which includes representatives of local and national fleet operators, municipalities, alternative and clean fuel providers, and government officials. The Workgroup's efforts are intended to spur use of clean alternative fuel vehicles. Major areas of focus for the Workgroup, as it implements its Action Plan, include development of a New Jersey alternative fuel mechanic training program and promotion of a State policy supporting the use of alternative fuels and AFVs.

2. EPAct Purchase Mandates

The second component of the NJCF program is the alternative fuel vehicle purchase requirements under the federal EPAct, 42 U.S.C. § 13201 *et seq.* Under EPAct, all state, federal, and fuel-provider fleets must ensure that a percentage of their new LD vehicle purchases operate on alternative fuels. In the long term, 75% of new state and federal purchases and 90% of fuel-provider purchases must be AFVs. To date, New Jersey reports that 61 State vehicles have been converted to run on clean alternative fuels as a result of EPAct compliance, and alternative fuel vehicles are available for purchase by public agencies through the State purchase contract.

3. New Jersey Clean Cities Program

Clean Cities is a voluntary federal program designed to accelerate and expand the use of clean AFVs and related refueling infrastructure in communities throughout the country. In 1995 the State's Division of Energy initiated Clean Cities programs in the metropolitan areas of Elizabeth, Jersey City, Newark and Trenton; New Jersey plans to expand these programs in other areas of the State as well. New Jersey expects the program to have a significant long term emission reduction benefit.

4. Advanced Technology Vehicle Program

The fourth component of the NJCF program is the Advanced Technology Vehicle (ATV) component of the NLEV program. NLEV is an alternative to the Ozone Transport Commission (OTC) LEV program, which the OTC petitioned EPA to require. EPA had made a determination requiring LEV to be adopted throughout the northeast ozone transport region (OTR); however a Federal Circuit Court has since remanded that requirement. *Virginia v. EPA*, No. 95-1163 (D.C. Cir. March 11, 1997). NLEV is a voluntary program wherein auto manufacturers would manufacture low emission vehicles nationwide instead of just for the OTR and California.

EPA proposed the NLEV program in October 1995, and issued the final NLEV rule in the June 6, 1997 **Federal Register** (62 FR 31192). EPA also issued an NLEV supplementary Notice of Proposed Rulemaking (SNPRM) on August 22, 1997. EPA intends to finalize the SNPRM by mid- to late-autumn, 1997. Auto manufacturer and OTC state opt-ins shortly thereafter will ensure program startup in time for model year 1999 LEVs in the OTR.

In EPA's June 6, 1997 NLEV final rulemaking, an ATV was defined as any vehicle certified by CARB or EPA that is either: (1) A dual-fuel, flexible-fuel, or dedicated alternatively fueled vehicle certified as a transitional low emission vehicle (TLEV), LEV, or ultra low emission vehicle (ULEV) when operated on the alternative fuel; (2) certified as a ULEV or Inherently Low Emission Vehicle (ILEV); or (3) a dedicated or hybrid electric vehicle. As discussed in that rulemaking, EPA acknowledges the suggestion that advancing motor vehicle pollution control technology is an important benefit of NLEV.

Furthermore, it has been suggested by several parties, including New Jersey, that establishment of an ATV component should be a criterion for

determining whether NLEV is an acceptable LEV-equivalent program. Although EPA agrees that advancing technology is an important goal, and EPA believes that the NLEV program could be a part of an agreement that would provide important opportunities to promote ATVs, the regulatory portion of the NLEV program does not address ATVs, EPA does not believe that advancing technology is or should be a legally-required criterion for approval of a LEV-equivalent program, and given the court decision invalidating the OTC LEV SIP call, there is no longer any legal requirement for NLEV to be a LEV-equivalent program. Nevertheless, EPA recognizes that including some advanced technology component is important and could provide additional environmental benefits beyond emissions reduction equivalency. Furthermore, EPA agrees with New Jersey's intention to use the ATV component as part of its substitute (backstopped by the enforceable State LEV program) for the federal CFFP. The ATV program involves a cooperative effort among the states in the OTR, EPA, DOE, fuel providers, aftermarket converters, fleet operators, and the full range of motor vehicle manufacturers to develop ways to increase use of ATVs. The NJDEP expects to begin implementing the ATV program, in cooperation with other states, the auto manufacturers, and fuel providers, as soon as the NLEV program with an ATV component becomes effective.

In order to facilitate implementation of the NJCF program, New Jersey has stated in its latest SIP revision that it is relying on EPA to support the ATV initiative by approving emission reduction SIP credits, where appropriate, upon the introduction of ATVs into the fleet. EPA is prepared to assist the State in this manner (*i.e.* by allowing long term emission reductions generated by the ATV component of NLEV to be used in part as a substitute SIP measure for the CFFP), provided emissions reductions from the ATV provision, along with those generated from the other NJCF program components, can be documented by the State. It is for this purpose that New Jersey has incorporated a planned system to track NJCF program emissions reductions. This system, described below, will serve to identify the need, if any should exist in the future, to utilize the credit from the State's adopted LEV program (*i.e.*, the backstop) should the planned reductions not occur as intended with the voluntary NJCF program.

NJCF Program Backstop

New Jersey, in exercising its option under section 177 of the Clean Air Act, has adopted a LEV program which affects all new LD vehicles sold State-wide, specifically passenger cars and LD trucks under 6,000 lbs. gross vehicle weight rating (GVWR) for vehicle model years 1999 and later. 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.

New Jersey'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 LD portion of a CFFP; in the event that the NJCF failed to reduce long term emissions to the level which would have been achieved by the CFFP, LEV could make up the resultant shortfall.

Vehicle Tracking System

As part of its most recent NJCF SIP revision, New Jersey has committed to implement an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program (detailed above) throughout the State beginning in 1998. The State will periodically track the variety of clean NJCF vehicles purchased in New Jersey, but most notably CARB certified LEVs (and vehicles certified to more stringent standards, such as ULEVs). The information gathered from the automated tracking system would provide an accurate indication of the number of vehicles purchased in New Jersey that are certified to meet the applicable LEV, etc. standards. In this manner the State can accumulate a database with which it can calculate emission reduction benefits associated with certified clean vehicle purchases resulting from the NJCF program, and determine if necessary the need to employ the LEV backstop discussed above.

IV. Summary of Action

In this proposed rule, EPA is proposing to approve New Jersey's SIP revision submitted to fulfill the Clean Fuel Fleet requirements of the Clean Air Act. EPA believes New Jersey's Clean Fuel Fleet program, backstopped by the adopted New Jersey LEV program implementing the low emission vehicle program are an adequate substitute for the federal Clean Fuel Fleet program under section 182(c)(4).

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.

Administrative Requirements

Executive Order 12866

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

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Regulatory Flexibility Act

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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: November 6, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97-30521 Filed 11-19-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-5923-6]

Notice of Public Meeting on the Ground Water Disinfection Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of meeting.

SUMMARY: Notice is hereby give that the Environmental Protection Agency (EPA) is holding a public meeting concerning the Ground Water Disinfection Rule (GWDR). The objective of this meeting is to provide the public with data summaries to support the GWDR development; ask for comments on the data; solicit further data if available; discuss the EPA's next steps for the rule development and data analysis; as well as to identify parties who may be interested in further meetings.

DATES: The meetings will be held on December 18 and 19, 1997.

ADDRESSES: The meetings will be held at the Ana Hotel at 2401 M street, NW, Washington, D.C. 20037. The hotel's phone number is (202) 429-2400.

FOR FURTHER INFORMATION CONTACT: EPA will provide a copy of the data summaries a few weeks prior to the meeting to anyone who requests it. To

register for the meeting and for the data summaries please contact the Safe Drinking Water Hotline (800) 426-4791 or Marty Kucera at US EPA (202) 260-7773, kucera.martha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection "as necessary" for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. To determine if treatment is necessary, the rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

Dated: November 17, 1997.

William R. Diamond,

Acting Director for Office of Ground Water and Drinking Water.

[FR Doc. 97-30556 Filed 11-19-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-232, RM-9191]

Radio Broadcasting Services; Eureka, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William G. Brady d/b/a KHJ Radio proposing the allotment of Channel 228C3 at Eureka, Montana, as that community's first local FM broadcast service. The channel can be allotted to Eureka without a site restriction at coordinates 48-52-54 and 115-02-54. Although it is not necessary to site restrict the allotment, we will request concurrence from the Canadian Government for Channel 228C3 as a specially negotiated short-spaced allotment. Channel 228C3 at Eureka is short spaced to vacant Channel 226C, Cranbrook, British Columbia, Canada.

DATES: Comments must be filed on or before January 5, 1998, and reply comments on or before January 20, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, as follows: William G. Brady d/b/a KHJ Radio, 746 Shadow Lane, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-232, adopted November 5, 1997, and released November 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-30414 Filed 11-19-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE44

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Plagiobothrys Hirtus* (Rough Popcornflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered