

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