

improved patios; (8) walks and driveways; (9) septic sewage treatment facilities; (10) and lot drainage and lawn and garden irrigation systems. (C) Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determinations as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 1996.

Michael C. Wolfrom,
*Acting Regional Director, Mid-Continent
Regional Coordinating Center.*

[FR Doc. 96-23941 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY23-1-155, FRL-5607-1]

Approval and Promulgation of Implementation Plans; State of New York; Heavy Duty Clean Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing conditional approval of the State Implementation Plan revision submitted by the State of New York for the purpose of meeting the requirement to submit the heavy duty vehicle portion of the Clean Fuel Fleet program (CFFP) required by the Clean Air Act. This revision will establish and require the implementation of a Clean Fuel Fleet Program applicable to centrally fueled heavy duty vehicle fleets in the New York severe ozone nonattainment area. **DATES:** Comments must be received on or before October 21, 1996.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II 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 II Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866
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, 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 certain States, including New York, to submit for EPA approval a State Implementation Plan (SIP) revision that includes measures to implement a 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 beginning in model year 1998. 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.

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 the long-term emissions reductions 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 York chose to opt out of the light duty vehicle portion of the CFFP requirements with its May 15, 1994 and August 9, 1994 SIP revisions that transmitted the New York State Code of Rules and Regulations, Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," the State's low emission vehicle program (LEV). However, the State also chose not to opt out of the heavy duty vehicle portion of the CFFP in the 1994 submissions. A proposed heavy duty vehicle CFFP regulation was included in the May 15, 1994 submittal that was intended by New York to fulfill the heavy duty portion of the required program. EPA took final action in a Federal Register notice dated January 6, 1995 approving the State's LEV program as an adequate light duty vehicle CFFP substitute measure, as permitted by section 182(c)(4) of the Clean Air Act (see 60 FR 2022).

However EPA, in the same notice, disapproved the heavy duty portion of that submittal (the reader is referred to the January 6, 1995 notice for a detailed discussion of the severable nature of the CFFP). At that time the heavy duty CFFP was unadopted by the State. Therefore, pursuant to 40 CFR 52.31(c)(2), EPA found that New York failed to meet one or more of the elements of SIP submission required by the Act, namely that measures must be state-adopted. As a result of the partial disapproval of the SIP, the January 6, 1995 notice initiated the sanction process, mandated by section 179(a)(2) of the Clean Air Act. The Clean Air Act prescribes two mandatory sanctions that the Administrator must impose: (1) A requirement for two-for-one emissions offsets in nonattainment areas for

construction of major new and modified sources, and (2) a cutoff of federal funding for certain highway projects. The first sanction must be imposed eighteen months from the date of the finding that the SIP revision is not approvable, if the deficiency causing the disapproval is not corrected by that time. New York's August 1996 heavy duty Clean Fuel Fleet regulation was submitted to EPA in advance of the first sanction, which was scheduled to take effect on September 7, 1996. In this notice, EPA is proposing conditional approval of the State's heavy duty Clean Fuel Fleet program as satisfying the requirements of the Clean Air Act and correcting the deficiency identified in New York's first CFFP submittal. Elsewhere in today's Federal Register, EPA is also publishing an Interim Final Determination that New York has corrected the deficiency which started the sanctions clocks and which will defer imposition of the sanctions.

II. Program Requirements

Unless a state chooses to opt-out of the CFFP under section 182(c)(4) of the Clean Air Act, section 246 of the Clean Air Act directs a state containing covered areas to revise its SIP to establish a CFFP. The CFFP shall require a specified percentage of all newly acquired vehicles of covered fleets, beginning with model year (MY) 1998 and thereafter, to be Clean Fuel Vehicles (CFVs) and shall require such vehicles to use the fuel on which the vehicle was certified to be a CFV, when operating in the covered area.

III. State Submittal

The State of New York did not choose to opt-out of the heavy duty portion of the CFFP pursuant to section 182(c)(4) of the Clean Air Act and, therefore, submitted as part of its SIP revision on May 15, 1994, a proposed heavy duty CFFP. However, because this portion of the submittal did not include a fully adopted rule establishing a heavy duty CFFP, EPA disapproved that portion of the submittal as required by the Clean Air Act. On August 9, 1996, the State submitted to EPA a letter requesting review of its heavy duty CFFP, that was proposed and emergency adopted in the *New York State Register* on July 24, 1996. In a letter dated August 23, 1996, EPA transmitted comments to New York on its proposed addition to 6 NYCRR of Part 210, "Centrally Fueled Fleets." The State responded to EPA's August 23 letter with a letter dated August 28, 1996, in which New York stated its intent to address EPA's comments prior to fully adopting 6 NYCRR Part 210. Because the State has a rule in place and

has submitted a commitment to make specific revisions to its program, EPA is proposing to conditionally approve the rule submitted on August 9, 1996.

IV. Analysis of State Submittal

EPA has reviewed the State's submittal for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. More detailed support for approval of the State's submittal is contained in a Technical Support Document (TSD), which is available from the Region 2 Office, listed above.

A. Covered Areas

As required by section 246(a)(2) of the Clean Air Act, the SIP revision needs to list those areas where the CFFP will be implemented. In New York, the applicable area defined by section 246(a)(2) is comprised of New York City, Long Island, Westchester and Rockland Counties, and the seven southern-most townships in Orange County. Part 210.1(as) of 6 New York Code of Rules and Regulations (6 NYCRR) defines the covered area to include the following counties: Bronx, Kings, Queens, New York, Richmond, Rockland, Putnam, Westchester, Nassau and Suffolk, and the lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury. The areas covered under 6 NYCRR Part 210.1(as) are the same areas as required by the Clean Air Act.

B. Definitions

Sections 241 (1) to (7) of the Clean Air Act, and 40 CFR 88.302-94, define specific terms that are to be used in the state CFFP regulations. 6 NYCRR Part 210.1 contains definitions of the terms used by New York in the heavy duty CFFP rule. With three minor exceptions, the revision's definitions are consistent with section 241 (1) to (7) of the Clean Air Act as well as 40 CFR 88.302-94. In its August 28, 1996 letter of intent, New York indicated that it would address EPA's comments regarding the following subparts of 6 NYCRR Part 210, based on EPA's August 23, 1996 comments: (g), Capable of being centrally fueled, (y), Financial hardship, and (an), Majority of travel. The first and third of these would allow the State to use methods other than those listed in the Clean Air Act or the CFR to determine which fleets are covered by the CFFP. EPA believes the State has discretion to use other methods to assist in that determination, although those methods would be subject to EPA approval (see 58 FR 64682). The State's 6 NYCRR Part 210 needs to reflect the

dependance of such methods on EPA's approval. Subpart 210.1(y) of 6 NYCRR, defines the term "financial hardship" as it would relate to covered fleet operators and the relative cost of compliance they would incur. While not a Clean Air Act-required CFFP element, EPA does agree that use of such a term would be reasonable in certain situations. If the State chooses to retain this definition in the regulation, it should modify it to be less specific or provide justification for the detail it intends to employ in determining if a covered fleet operator can claim financial hardship for the purpose of being exempted from the CFFP requirements.

C. Covered Fleets

Section 241(5) of the Clean Air Act defines a "covered fleet" as 10 or more motor vehicles that are owned or operated by a single person. Part 210.1(aq) and 210.2 of 6 NYCRR, taken together, identify the vehicles/fleets that are included in New York's heavy duty CFFP, and are consistent with section 241(5) of the Clean Air Act. Section 210.2 of 6 NYCRR correctly identifies federal fleets as among those that would be required to participate in the CFFP if they were determined to be covered. However, subpart (d) of that section imposes federal agencies operating covered fleets to obtain CFV's from original equipment manufacturers (OEM). EPA does not believe that such a requirement is a necessary element of a state's CFFP, as it is not an explicit requirement of section 246 to be included in states' SIP revisions. In its August 28, 1996 letter of intent, New York agreed to address EPA's comment that 6NYCRR Part 210.2 should be amended to eliminate the specific requirement that covered federal fleets comply with the CFFP by purchasing OEMs. Pursuant to section 248 of the Clean Air Act, federal fleets are subject to the requirements of part C of Title II of the Act. Federal fleets in the covered area would be sufficiently subject to the requirements of New York's CFFP, once approved by EPA, in the same manner as privately-owned fleets.

D. Vehicles Classes Covered

Sections 242 and 243 of the Clean Air Act and 40 CFR part 88, subpart C, define the vehicle classes covered by the CFFP. Section 210.1(j) of 6 NYCRR defines the vehicle weight classes covered by the New York heavy duty CFFP. These classes are light duty trucks between 6,000 and 8,500 pounds gross vehicle weight rating (GVWR) and heavy duty trucks between 8,500 pounds and 26,000 pounds. New York's subsections 210.1 (ad), (ae) and (af)

further subdivide the heavy duty vehicle class into light heavy duty vehicles (8,501 to 19,500 pounds), medium heavy duty vehicles (19,501 to 26,000 pounds) and heavy heavy duty vehicles (26,001 pounds and greater). Heavy heavy duty vehicles are not affected by the heavy duty CFFP. The classes of vehicles included in the revision are identical to those set forth in sections 242 and 243 of the Clean Air Act and 40 CFR part 88, subpart C, as they apply to the two weight classes regulated in New York's CFFP.

E. Clean-Fuel Vehicles (CFVs)

Section 241(7) of the Clean Air Act defines a CFV to mean a vehicle in a class or category of vehicles that has been certified to meet, for any model year, the applicable CFV standards. 40 CFR 88.104-94 and 40 CFR 88.306-94 establish three categories of increasingly stringent CFV standards, which are referred to as low-emission vehicle (LEV) standards, ultra low-emission vehicle (ULEV) standards, and zero-emission vehicle (ZEV) standards. In addition, a vehicle certified by the EPA to meet the inherently low-emission vehicle (ILEV) standard, found in 40 CFR 88.311-93, is also considered a CFV. Section 210.1(j) of 6 NYCRR also defines a CFV as a vehicle which has been certified to meet, for any model year, a set of emission standards, contained in Tables 1 through 6 of the New York CFFP rule. The standards specified in the rule are the same as those established in 40 CFR 88.104-94, 40 CFR 88.311-93, and 40 CFR 88.306-944, with one exception: in Table 6, Emission standards for heavy-duty trucks, the ULEV formaldehyde (HCHO) emission standard reads 0.05 grams per brake horsepower-hour(g/bhp-h); it should read 0.025 g/bhp-h (see 40 CFR 88.105-94). In its August 28, 1996 letter of intent, New York agreed to address this concern.

F. Percentage Requirements

Section 246(b) of the Clean Air Act establishes phase-in requirements for covered fleets applicable to new vehicle acquisitions. Section 210.3 of 6 NYCRR contains the CFV purchase requirements for the New York's heavy duty CFFP. The phase-in schedule in New York's rule is identical to the schedule in the Clean Air Act. Sections 210.4 (a)(2) and (b)(3) of 6NYCRR are similar to Clean Air Act section 246(c)(1), which allows for an effective delay in the CFFP phase-in schedule upon an EPA determination that clean fuel vehicles are not reasonably available. In its August 28, 1996 letter of intent, New York agreed to address EPA's comment regarding the

need to modify its CFFP phase-in schedule delay provision to make it necessarily more consistent with Clean Air Act section 246(c)(1) and EPA policy. Section 246(c)(1) allows for an effective delay in the CFFP phase-in schedule for clean fuel vehicle purchases until one model year after vehicles of those classes which meet the applicable clean fuel vehicle emission standards are offered for sale in California; section 246 limits such a delay to last no longer than Model Year 2001 vehicles.

G. Credit Program

Section 246(f) of the Clean Air Act and 40 CFR 88.304-94 require the State to implement a credit program as part of the CFFP. Briefly, the Clean Fuel Fleet (CFF) credit program establishes a market-based mechanism that allows fleet owners some flexibility in complying with the CFF purchase requirement. Fleet owners may meet the purchase requirements by trading emission reduction credits earned in any the following ways: (1) By the purchase of more CFVs than the minimum required by a CFFP; (2) by the purchase of CFVs which meet more stringent emission standards than the minimum required by the CFFP; (3) by the purchase of CFVs otherwise exempt from the CFFP; and (4) by the purchase of CFVs before MY 1998. The credits generated may be used by a covered fleet operator to satisfy the purchase requirements of a CFFP or may be traded by one covered fleet operator to another, provided the credits were generated and used in, and both operators are located in, the same nonattainment area. Certain restrictions on the trading of the credits between classes must be observed. The credits do not depreciate with time and are to be freely traded without interference by the state.

Section 210.5 of 6 NYCRR establishes a credit program that provides credits for operators who: (1) Acquire more CFVs than the New York heavy duty CFFP requires in any year, (2) acquire CFVs which meet more stringent emission standards than the minimum requirements, (3) acquire CFVs in exempted vehicle categories, or (4) acquire CFVs prior to the effective date of New York's CFFP regulation. These eligibility requirements are consistent with section 246(f) of the Clean Air Act. Section 210.5 of 6NYCRR includes Tables 8 and 9, which set forth the amount of credit granted for the various ways of meeting the purchasing requirements explained above. These tables are identical to Tables C94-1.1 and C94-4.1 of 40 CFR part 88, subpart

C. However, in Table 7 of 6NYCRR Part 210.4, Emission standards for determining credit weighting, the LEV combined emission standard (NMHC+NO_x) reads 3.8 g/bhp-h; it should read 3.5 g/bhp-h (see Table 3.2, 58 FR 11888, 3/1/93). In its August 28, 1996 letter of intent, New York agreed to address this concern.

The SIP revision requires credits for vehicles in separate weight classes to be kept separate. Trading of credits between heavy duty vehicle (HDV) subclasses in a downward direction only is permitted. Trading is not allowed between vehicles greater than 8,500 pounds GVWR and vehicles between 6,000 pound GVWR up to and including 8,500 pound GVWR weight classes in an upward direction. These limitations and restrictions are consistent with those specified in section 246(f)(2) of the Clean Air Act.

H. Fuel Use

40 CFR 88.304–94(b)(3) requires that the fuel on which a dual-fuel or flexible-fuel CFV was certified to be used at all times in such a vehicle when it is operated in the covered area. Section 210.5(b)(3) of 6 NYCRR requires that for any dual-fuel/bi-fuel or flexible-fuel vehicle to be considered a CFV (and therefore capable of generating credit), the vehicle must be operated in the program area on the fuel on which it was certified as a CFV. This limitation is consistent with 40 CFR 88.304–94(b)(3).

I. Fuel Availability

Section 246(e) of the Clean Air Act requires the SIP revision to require fuel providers to make clean alternative fuel available to the covered fleets at central locations. Section 210.7 of 6 NYCRR requires fuel providers to make clean fuels available to covered fleet operators at central locations, similarly to Clean Air Act section 246(e). In its August 28, 1996 letter of intent, New York agreed to address EPA's comment that its heavy duty CFFP should be amended to relieve affected fuel providers, and the State, of unnecessary administrative burden by simplifying 6NYCRR Part 210.7 to make it more consistent with Clean Air Act section 246(e). Such a modification would eliminate the need for the State to include a variance provision in its Fuel Provider Requirements section; such a provision, if ultimately included, would require EPA approval prior to State granting of any applicable waivers, variances or extensions.

J. Consultation

Section 246(a)(4) of the Clean Air Act requires that the SIP revision must be developed in consultation with fleet operators, vehicle manufacturers, fuel producers, distributors of motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values, and other relevant factors. In its August 28, 1996 letter of intent, New York agreed to address EPA's comment that it include documentation that adequate consultation was used in developing its heavy duty CFFP regulation. The documentation should indicate that their consultation took into consideration the factors specified in section 246(a)(4) of the Clean Air Act.

K. Recordkeeping and Reporting

Although not specifically required by section 246 of the Clean Air Act or 40 CFR 88.304–94, EPA believes that certain recordkeeping and reporting requirements to be imposed on fleet operators participating in the CFFP are a necessarily prudent component of a state's CFFP regulation.

New York's Part 210 contains recordkeeping and reporting requirements for covered fleet owners and operators in section 210.6 of 6 NYCRR which are adequate to ensure program compliance. This section requires each covered fleet owner to submit annual compliance certification which indicates the number of covered fleet vehicles by weight class, the number of new covered fleet vehicles by weight class, the number of new CFVs purchased by weight class and emission standard (LEV, ULEV, ZEV), the current model year credit balance, and the cumulative credit balance. New York's heavy duty CFFP regulation also requires fleet owners to report vehicle number and type projections needed to comply with the phase-in schedule. Fleet fuel needs, including type and quantity of fuel required on an annual basis, is also a reporting requirement of New York's regulation. If the required fuel is unavailable, the regulation requires fleet owners to request the State to make it available.

The regulation ensures that New York State Department of Environmental Conservation (NYSDEC) will, on receipt of each fleet owner certification, determine completeness/incompleteness and take appropriate action. In addition, NYSDEC is required to verify the existence of credits prior to any credit transactions and to approve of all credit transactions prior to transaction commitment. The State

imposes these same reporting requirements on non-covered fleet owners who wish to generate credits.

L. Enforcement

EPA believes the State should provide adequate enforcement to ensure that covered fleet owners comply with the requirements of the regulations adopted for implementation of the heavy duty CFFP. In addition to enforcement authorities applicable to the State program, the State also provides for enforcement in section 210.6 of the heavy duty CFFP reporting requirements through the authority of New York's Penal Law regarding certification requirements, including punishment for submission of false certification statements.

M. Transportation Control Measure Exemptions

40 CFR 88.307–94(a) requires states to exempt any CFV, required by law to participate in a CFFP, from temporal-based (e.g., time-of-day or day-of-week) transportation control measures (TCM) existing for air quality reasons as long as the exemption does not create a clear and direct safety hazard. In the case of high occupancy vehicle (HOV) lanes, this exemption only applies to CFVs that are certified to be ILEVs pursuant to 40 CFR 88.313–93. Section 210.8 exempts CFVs from temporal based TCMs as long as the CFV is in compliance with applicable emission standards. In addition, section 210.8(b) exempts ILEVs from TCM restrictions that primarily depend on a non-temporal element, such as HOV restrictions. These TCM exemptions are consistent with those provided for in 40 CFR 88.307–94 and 40 CFR 88.313–93.

V. Action

EPA is proposing conditional approval of New York's heavy duty CFFP SIP regulation as fulfilling requirements under the Clean Air Act. If the conditions are not met as required by the Clean Air Act, such conditional approval converts to a disapproval. If the State meets its commitments before EPA takes final action on this notice of proposed rulemaking, EPA will fully approve the SIP revision as meeting the requirements of the Clean Air Act without further notice.

Conclusion

EPA has reviewed the New York heavy duty CFFP regulation, submitted to the EPA as described above. EPA proposes to find that the State's regulation represents an acceptable approach to the heavy duty CFFP requirements and that it meets all the

criteria required for approvability provided the State meets the conditions described herein. EPA will evaluate all comments received on this action and the Interim Final Determination action. Assuming no substantial changes are made other than those areas cited in this document when New York adopts and formally submits its heavy duty CFFP to EPA and EPA receives no substantive negative comments, EPA will publish a final rulemaking approving or conditionally approving the CFFP regulation which will remove the need to impose sanctions on the State regarding this Clean Air Act requirement at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan 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

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.

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 sections 110 and 301, 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 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).

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 federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 29, 1996.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 96-23818 Filed 9-18-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FL-5611-5]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Sections 111 and 112 Standards; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes source category-limited interim approval of the Operating Permits Program submitted by Maine for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also proposing to approve Maine's authority to implement hazardous air pollutant requirements.

DATES: Comments on this proposed action must be received in writing by October 21, 1996.

ADDRESSES: Comments should be addressed to Donald Dahl, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203-2211. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203-2211.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203-2211, (617) 565-4298.

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to