

payable on or after the date of the allowance of the decrease.

(iii) An amount (not including an amount the time for payment of which has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease, including any assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances.

(2) If the unpaid amount of tax includes more than one unpaid amount, the Commissioner in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in paragraphs (d)(1)(i) through (iii) of this section in the order named. If there are several amounts of the type described in paragraph (d)(1)(iii) of this section, any amount of the decrease which is to be applied against the amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay the tax in installments. The unpaid amount of tax against which a decrease may be applied under paragraph (d)(1) of this section may not include any amount of tax for any taxable year other than the year of the decrease. After making the application, the Commissioner will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, or unused investment credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after the application and credits may, within the 90-day period, in the discretion of the Commissioner, be credited against any tax liability or installment thereof then due from the taxpayer (including assessed liabilities, unassessed liabilities determined in a statutory notice of deficiency, unassessed liabilities identified in a proof of claim filed in a bankruptcy proceeding, and other unassessed liabilities in rare and unusual circumstances), and, if not so credited, shall be refunded to the taxpayer within the 90-day period.

(e) *Effective/applicability date.* (1) These regulations apply with respect to applications for tentative refund filed on or after August 27, 2007.

(2) The applicability of this section expires on or before August 24, 2010.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 1, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. EPA-R02-OAR-2006-0920; FRL-8441-7]

### Approval and Promulgation of Implementation Plans; New Jersey; Low Emission Vehicle Program

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is approving a state implementation plan revision submitted by the State of New Jersey. The State's revision adopts California's second generation low emission vehicle program for light-duty vehicles, LEV II, beginning with the 2009 model year. EPA is not taking action on two provisions of New Jersey's program: the zero-emission vehicle sales mandate and the greenhouse gas emission standards. The intended effect of this rulemaking is to approve a control strategy which will result in emissions reductions that will help New Jersey achieve attainment of national ambient air quality standard for ozone.

**DATES:** *Effective Date:* This rule will be effective September 26, 2007.

**ADDRESSES:** 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, Public  
Access Center, 401 East State Street,  
1st Floor, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:**

Matthew Laurita,  
*laurita.matthew@epa.gov* at the  
Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
NY 10007-1866, telephone number

(212) 637-3895, fax number (212) 637-3901.

## SUPPLEMENTARY INFORMATION:

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- I. Description of the SIP Revision
- II. Comments on the Proposed Rulemaking
- III. Final EPA Action
- IV. Statutory and Executive Order Reviews

### I. Description of the SIP Revision

Section 209(a) of the Clean Air Act (CAA or the Act) prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA shall grant a waiver of the section 209(a) prohibition to the State of California (unless EPA makes specified findings), thereby allowing California to adopt its own motor vehicle emissions standards. Section 177 of the CAA allows other states to adopt and enforce California's standards relating to the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition to the identity requirement, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. All state implementation plan (SIP) revisions submitted to EPA for approval must also meet the requirements of CAA section 110.

In January 2004, the New Jersey Legislature passed legislation requiring the New Jersey Department of Environmental Protection (NJDEP) to adopt the California low emission vehicle (LEV) program, known as the LEV II program. Pursuant to this legislation, New Jersey promulgated regulations to adopt a LEV program identical to California's LEV II program. New Jersey's regulations were adopted on November 28, 2005. New Jersey's LEV program will affect light-duty motor vehicles manufactured in model year 2009 and later.

On June 2, 2006, New Jersey submitted a SIP revision to EPA, seeking federal approval of its LEV regulations. New Jersey's SIP revision submittal meets the requirements of sections 177 and 110 of the Act. EPA's approval of New Jersey's LEV program makes it federally-enforceable, further ensuring that planned emission reductions will continue to take place. For further information on New Jersey's LEV program see the March 21, 2007, Proposed Rulemaking (72 FR 13227).

## II. Comments on the Proposed Rulemaking

EPA received two comments on the Proposed Rulemaking, published in the March 21, 2007 **Federal Register** (72 FR 13227). Both comments were supportive of EPA's proposed action to approve New Jersey's LEV program into the SIP. The comments and responses are included below.

*Comment:* EPA received a comment from a private citizen who was supportive of EPA's proposal to approve New Jersey's LEV program but expressed concerns over a lack of standards for small, non-road gasoline engines, such as for lawn mowers, ATVs, and jet skis.

*Response:* EPA notes the citizen's support of New Jersey's LEV program and notes that Subchapter 29 does not regulate small, non-road gasoline engines which were not a subject of the proposal. However, EPA has proposed emission standards for certain new non-road spark-ignition engines, equipment, and marine vessels (72 FR 28098). If implemented as proposed, these new standards will result in reductions of over 3.4 million tons of emissions by 2030.

*Comment:* NJDEP submitted comments in a letter dated April 20, 2007, in which NJDEP agreed with the proposed EPA action. However, NJDEP noted that on December 22, 2006, EPA issued a waiver of federal pre-emption to California, enabling California to implement the zero-emission vehicle (ZEV) component of its program through model year 2011. In light of EPA's granting this waiver, NJDEP requested that EPA act on the ZEV component of New Jersey's program, and approve it into the SIP through model year 2011, consistent with such waiver.

*Response:* EPA agrees with NJDEP and will propose to approve the ZEV component of New Jersey's LEV program in a separate notice-and-comment rulemaking. EPA is not taking action on the ZEV component in today's document, in order to allow the public an adequate opportunity to comment on this specific aspect of New Jersey's LEV program, since the March 21, 2007 Proposed Rulemaking (72 FR 13227) did not propose action on New Jersey's ZEV provisions.

## III. Final EPA Action

EPA is approving New Jersey's LEV program, which is identical to the portions of California's LEV II program for which EPA has issued a waiver of pre-emption, with the exception that EPA is taking no action on the ZEV component of New Jersey's program.

EPA has not issued a waiver to California to implement its greenhouse gas regulations, and therefore, EPA is also taking no action on the greenhouse gas portion of New Jersey's LEV program. Approval of New Jersey's LEV program further ensures that planned emissions reductions attributable to this program will be achieved. The New Jersey LEV program was adopted on November 28, 2005, published in the New Jersey State Register on January 17, 2006, is codified in Title 7, Chapter 27, Subchapter 29 of the New Jersey Administrative Code and replaces Subchapter 26, "Ozone Transport Commission—Low Emission Vehicles Program" which is now being removed from the SIP.

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 26, 2007. 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 action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 8, 2007.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

■ 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 *et seq.*

**Subpart FF—New Jersey**

■ 2. Section 52.1570 is amended by adding new paragraph (c)(82) to read as follows:

**§ 52.1570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(82) Revisions to the State Implementation Plan submitted on June 2, 2006, by the New Jersey Department of Environmental Protection which consists of the adoption of California's second generation Low Emission Vehicle (LEV) program.

(i) Incorporation by reference:

(A) Regulation Subchapter 29 of Title 7, Chapter 27 of the New Jersey Administrative Code, entitled "Low Emission Vehicle (LEV) Program," except sections 29.6, 29.7, and 29.13(g) (incorporation by reference of Title 13, Chapter 1, Article 2, Sections 1961.1 and 1962 of the California Code of Regulations only), adopted on November 28, 2005.

\* \* \* \* \*

■ 3. Section 52.1605 is amended by removing the entry for Subchapter 26 and adding a new entry for Subchapter 29 under Title 7, Chapter 27 to read as follows:

**§ 52.1605 EPA-approved New Jersey regulations.**

State regulation	State effective date	EPA approved date	Comments
* * *	* * *	* * *	* * *
Title 7, Chapter 27			
* * *	* * *	* * *	* * *
Subchapter 29, "Low Emission Vehicle (LEV) Program".	January 27, 2006	August 27, 2007. [Insert Federal Register page citation].	Sections 29.6, 29.7, and 29.13(g) [Title 13, Chapter 1, Article 2, Sections 1961.1 and 1962 of the California Code of Regulations] relating to zero-emission vehicles and greenhouse gas emission standards are not incorporated into the SIP.
* * *	* * *	* * *	* * *

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 65**

[EPA-HQ-OAR-2007-0429; FRL-8459-5]

RIN 2060-A045

**Revisions to Consolidated Federal Air Rule**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action on the General Provisions for Consolidated Federal Air Rule to allow extensions to the deadline imposed for source owners and operators to conduct required performance tests in certain specified force majeure circumstances. On May 16, 2007, we published a final rule that revised the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission

Standards for Hazardous Air Pollutants for Source Categories to allow extensions to the deadline imposed for source owners and operators to conduct required performance tests in certain specified force majeure circumstances. We recently realized that we should have also revised the Consolidated Federal Air Rule to allow for similar extensions.

**DATES:** This rule is effective on November 26, 2007 without further notice, unless EPA receives adverse comment by September 26, 2007. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in this rule will not take effect.

**ADDRESSES:** Submit your comments, identified under Docket ID No. EPA-HQ-OAR-2007-0429 by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-9744.
- *Mail:* Revisions to Consolidated Federal Air Rule, Environmental

Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., EPA Headquarters Library, Room 3334, EPA West Building, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0429. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which