



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2017-0094; FRL-9991-50-Region 2]

Approval and Promulgation of Implementation Plans: New York Ozone Section 185

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is finalizing approval of the State of New York's Low Emissions Vehicle program as an alternative program to fulfill the Clean Air Act section 185 requirement for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area for the revoked 1979 1-hour ozone National Ambient Air Quality Standard. Clean Air Act section 185 requires fees to be paid by major sources located in ozone nonattainment areas classified as Severe or Extreme that have failed to attain the National Ambient Air Quality Standard by the required attainment date. The State of New York's Low Emissions Vehicle program is being approved as an alternate program because the reductions achieved by the program are at least equivalent to the reductions associated with the Clean Air Act section 185 fee program required for the New York portion of the NY-NJ-CT nonattainment area.

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2017-0094. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gavin Lau, Environmental Protection Agency, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-3708, or by email at Lau.Gavin@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. What action is the EPA taking?**
- II. What comments were received in response to the EPA's proposed action?**
- III. What is the EPA's Conclusion?**
- IV. Statutory and Executive Order Reviews**

I. What action is the EPA taking?

The Environmental Protection Agency (EPA) is approving the State of New York's Low

Emissions Vehicle (LEV II) program as an alternative program to fulfill the Clean Air Act (CAA) section 185 requirement for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area for the revoked 1979 1-hour ozone National Ambient Air Quality Standard (NAAQS). The LEV II program will be incorporated into the federally enforceable SIP as an alternative CAA section 185 program. The reader is referred to the proposed rulemaking on this action published in the Federal Register (FR) on December 6, 2018 (83 FR 62771) for additional details.

II. What comments were received in response to the EPA's proposed action?

The EPA received two comments in response to the EPA's December 6, 2018 proposed action. After reviewing the comments, the EPA has determined that the comments are generally in support of the EPA's proposed action. The comments also raise issues that are not germane to the EPA's proposed action and do not explain or provide a legal basis for how the proposed action should differ in any way. For this reason, the EPA will not provide a specific response to the comments and we are finalizing the action as proposed. The comments may be viewed under Docket ID Number EPA-R02-OAR-2017-0094 on the <http://www.regulations.gov> website.

III. What is the EPA's Conclusion?

The EPA has determined that New York's LEV II program is an approvable alternative program no less stringent than the program required by CAA section 185, consistent with the principles of CAA section 172(e). CAA section 172(e) provides that when the Administrator relaxes a

NAAQS, the EPA must ensure that all areas which have not attained that NAAQS maintain “controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.” CAA section 185 fee program requirements apply to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date. The requirements of CAA section 185 were applicable to the NY-NJ-CT nonattainment area for 2008 and 2009 since the area failed to attain the 1-hour ozone NAAQS by its attainment date. The NY-NJ-CT area later was determined to attain the 1-hour ozone NAAQS for 2008-2010 (77 FR 36163). Consistent with the principles of CAA section 172(e), a state can meet the 1-hour ozone section 185 obligation through either the fee program prescribed in section 185 of the CAA or an equivalent alternative program, if the state demonstrates that the alternative is not less stringent than the otherwise applicable section 185 fee program. The EPA has determined that the New York State Department of Environmental Conservation, on behalf of the State of New York, demonstrated that New York’s LEV II program provided emission reductions no less stringent than a CAA section 185 fee program for 2008 and 2009 and that it is an approvable equivalent alternative program to fulfill the Clean Air Act section 185 requirement for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area for the revoked 1979 1-hour ozone NAAQS. New York’s LEV II emission standards continue to be in place and achieve reductions in VOC and NO_x emissions.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices,

provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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 action 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 18, 2019.

Peter D. Lopez,
Regional Administrator,
Region 2.

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

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 et seq.

Subpart HH--New York

2. In §52.1670, the table in paragraph (e) is amended by adding the entry “Section 185 fee program” at the end of the table to read as follows:

§52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* *	**	**	*	
Section 185 fee program	State-wide	1/31/2014, supplemented on 4/7/2014, 10/13/2016, and 4/3/2018	[insert date of publication in the Federal Register], [insert Federal	Approval of the Low Emissions Vehicle Program (LEV II) as an

			Register citation]	alternative section 185 fee program
--	--	--	-------------------------------	---

3. In §52.1683, add paragraph (r) to read as follows:

§52.1683 Control strategy: Ozone.

* * * * *

(r) New York’s Section 185 Equivalency Demonstration State Implementation Plan revision submittal on January 31, 2014, and supplemented on April 7, 2014, October 13, 2016, and April 3, 2018, for the use of the State of New York’s Low Emissions Vehicle (LEV II) program as an alternative program to fulfill the Clean Air Act section 185 requirement for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area for the revoked 1979 1-hour ozone National Ambient Air Quality Standard is approved.

[FR Doc. 2019-06294 Filed: 4/1/2019 8:45 am; Publication Date: 4/2/2019]