Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 25, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to certain duties. To the extent that the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as mandate upon the private sector, EPA's action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22958 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[Region II Docket No. 140, NY 12–1–6477; FRL–5296–7]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision State of New York and Revision of Oxygenated Gasoline Control Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the approval of portions of a request from New York to revise its State Implementation Plan (SIP) related to the control of carbon monoxide. EPA is proposing approval of New York's vehicle miles travelled forecast, contingency measures, carbon monoxide emission inventory, multi-state coordination letter, and Downtown Brooklyn Master Plan. In addition, EPA is proposing approval of the oxygenated gasoline program in the New York City consolidated metropolitan statistical area during the four months when the area is prone to high ambient concentrations of carbon monoxide. New York's oxygenated fuels program also includes a provision for oxygenated fuels to serve as a contingency measure in the Syracuse metropolitan statistical area.

New York has recently updated its enhanced inspection and maintenance submittal which EPA is currently reviewing. Therefore, action on that program, along with the attainment demonstration, which relies on the enhanced inspection and maintenance program, will be taken in a separate **Federal Register** notice. These revisions have been submitted in response to requirements established in the Clean Air Act as amended in 1990 that the states develop a plan to attain the carbon monoxide standard.

DATES: Comments must be received on or before October 16, 1995

ADDRESSES: Written comments should be addressed to:

William S. Baker, Chief, Air Program 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, New York, New York 10007–1866.

New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1990, sets forth a number of requirements that states designated as moderate nonattainment for carbon monoxide had to submit as revisions to their SIPs by November 15, 1992. Since the New York portion of the ''New York-Northern New Jersey-Long Island'' carbon monoxide nonattainment area is classified as a moderate 2 area (an area that has a design value of 12.8–16.4 ppm.), New York was required to make this submission. These requirements are: an attainment demonstration, an enhanced vehicle inspection and maintenance program, an oxygenated fuels rule, a vehicle miles traveled forecast, contingency measures, a carbon monoxide emission inventory, a revised new source review program, and multi-state coordination letter.

EPA has issued a ''General Preamble'' describing its preliminary views on how it intends to review SIPs and SIP revisions submitted in order to meet Title I requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. The reader should refer to the General Preamble for a more detailed discussion of the Title I requirements and what EPA views as necessary to adequately comply with Title I provisions.

On November 13, 1992, New York submitted to EPA proposed revisions to its carbon monoxide SIP that addressed each of the above requirements for its moderate carbon monoxide nonattainment area. In addition, in a submittal dated March 21, 1994, New York submitted to EPA additional information pertaining to its carbon monoxide SIP.

As part of Federal Environmental Impact Statement work, certain projects in Brooklyn were identified as causing violations of the carbon monoxide standard. The State said that they would revise the carbon monoxide SIP to mitigate these problems. On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area.

These three submittals are the subject of this **Federal Register**. The following summarizes EPA's evaluation of New York's SIP submittals and EPA's proposed actions. The details of EPA's review are contained in the Technical Support Document available at EPA's Region II office.

Attainment Demonstration

Section 187(a)(7) of the Clean Air Act requires each state that contains all or part of a moderate 2 area to submit to the Administrator an attainment demonstration by November 15, 1992. This attainment demonstration documents how the State will attain the 8-hour carbon monoxide NAAQS of 9 ppm by December 31, 1995.

New York, using emissions from the EPA-approved MOBILE4.1 model, demonstrated attainment of the carbon monoxide standard with the EPA-approved CAL3QHC air quality dispersion model. New York took emission reductions credit from enhanced I/M, oxygenated fuels, and the federal motor vehicle control program (vehicle turnover) as control measures to attain the standard. A detailed explanation of this modeling is contained in the Technical Support Document.

New York's analysis demonstrated that all of the modeled intersections attained the 8-hour carbon monoxide standard of 9 ppm. The highest value obtained was 9.0 ppm which occurred at two intersections. Since air quality values at the most congested intersections was determined to not exceed the standard, New York has demonstrated that the entire area will be in attainment for carbon monoxide by December 31, 1995.

New York used appropriate modeling techniques and modeling inputs in this demonstration, however one of the control measures used to demonstrate attainment, the enhanced inspection and maintenance program, submitted on November 15, 1993 had not been fully adopted in accordance with State requirements. On July 31, 1995, New York submitted an updated enhanced inspection and maintenance program which EPA determined to be complete on August 2, 1995. EPA will take action on the enhanced inspection and maintenance program and the attainment demonstration in a separate **Federal Register** notice.

Enhanced Inspection and Maintenance Program

Section 187(a)(6) of the Clean Air Act requires implementation of enhanced inspection and maintenance programs in moderate 2 carbon monoxide nonattainment areas and includes provisions as required under section 182(c)(3) concerning serious ozone nonattainment areas. Such provisions require implementation of an enhanced inspection and maintenance program in urbanized areas with a population greater than 200,000.

On November 15, 1993 New York submitted draft regulations and other information pertaining to the enhanced inspection and maintenance program. Since New York did not submit a fully adopted enhanced inspection and maintenance program, on February 2, 1994 EPA notified the State that this submittal was incomplete and a sanctions process was begun. New York then made an updated submittal on July 31, 1995 which EPA will be taking action on in a separate **Federal Register** notice.

Oxygenated Fuels Rule

I. Introduction

Section 211(m) of the Clean Air Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the consolidated metropolitan statistical area or the metropolitan statistical area in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

State Submittal

In order to fulfill the Clean Air Act requirement, on September 27, 1993 New York submitted a request to revise its State Implementation Plan to incorporate adopted revisions to Title 6 Subpart 225–3 of the New York Code of Rules and Regulations, entitled ''Fuel Composition and Use—Volatile Motor Fuel,'' effective on September 2, 1993.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. New York has established control periods for the New York City consolidated metropolitan statistical area and the Syracuse metropolitan statistical areas which are consistent with the 1992 EPA guidance.

New York's oxygenated gasoline regulations require oxygenated gasoline to be sold in the larger of the consolidated metropolitan statistical area (CMSA) or metropolitan statistical area (MSA) in which the nonattainment area is located, consistent with the requirements of section 211(m)(2) of the Act. The New York City CMSA consists of the following counties: Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk. New York's current regulation requires oxygenated gasoline to be sold in this area from October 1 through April 30. While this control period had been appropriate in previous carbon monoxide control seasons in the New York City CMSA, EPA is proposing to determine, based on more recent ambient air monitoring data, that the appropriate oxygenated gasoline control period for the area should be shorter in length. Four months is the minimum program length allowed by the Clean Air Act, except as indicated in section 211(m)(B) which, at the request of a state with respect to any carbon monoxide nonattainment area, allows the EPA Administrator to reduce the period below four months. Such a determination can only occur if the State can demonstrate that due to meteorological conditions a shorter period will assure that no carbon monoxide exceedances will occur outside of that shorter period.

New York also requires the sale of oxygenated gasoline in any area of the State which had been designated as nonattainment for carbon monoxide but was redesignated as attainment, if it is required to maintain the standard in that area.

In the case of the Syracuse metropolitan statistical area, which has been officially redesignated as attainment for carbon monoxide (See 58 FR 50851), the oxygenated gasoline program is no longer required in that area since the attainment demonstration did not depend on the program. The oxygenated gasoline program constitutes the State's contingency measure for the Syracuse metropolitan statistical area, in

[1] *See* ''Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended—Notice of Availability,'' 57 FR 47849 (October 20, 1992).

the event that the carbon monoxide standard is violated in this area. If this program should need to be re-instituted in this area, the period of sale would be November 1 through the last day of February.

In this notice EPA is applying established Agency guidance (announced for availability at 57 FR 47853, October 20, 1992) regarding oxygenated gasoline control periods to determine the proper control period length for the New York City CMSA. As part of the 1992 guidance document, based on air quality data from 1990 and 1991, EPA suggested that the proper control period for the New York City CMSA was October 1 through April 30. However, the 1992 guidance does not establish a binding norm regarding control periods and provides that the determination of the control period will be an issue to be finally decided by EPA as part of the review of individual state SIP revisions for oxygenated gasoline programs. For the reasons set forth below, EPA is now proposing to determine that the appropriate control period is from November 1 through the last day of February; EPA believes sale of gasoline oxygenated to 2.7 percent by weight during the months of October, March and April is no longer necessary for adequate carbon monoxide control in the New York City CMSA.

Section 211(m), cited in the 1992 EPA guidance, requires control period length to be decided by the EPA Administrator based on the period an area is prone to high carbon monoxide concentrations. The three-state New York City CMSA has not recorded an exceedance of the carbon monoxide national ambient air quality standard (NAAQS) in the three months proposed to be dropped since October of 1991. Furthermore, since 1992 the CMSA has not been prone to high ambient concentrations of carbon monoxide, during those three months. Under the approach used in EPA's guidance, ''prone to high ambient concentrations of carbon monoxide'' is a criterion more stringent than the NAAQS.

While the successful reduction in ambient carbon monoxide levels during October, March and April in the New York City CMSA can in part be attributed to the sale of oxygenated gasoline, EPA believes that implementation of new programs under the Clean Air Act in the New York City CMSA will adequately ensure continued observance of reduced levels of carbon monoxide during the months of October, March and April. Reformulated gasoline, a year round clean gasoline program, which was implemented on January 1, 1995 in the New York City CMSA [see 59 FR 7716, February 16, 1994.] provides gasoline oxygenated to 2.0 percent. EPA believes that implementation of enhanced inspection and maintenance programs [40 CFR Part 51, Subpart S] and the turnover of the New York City CMSA fleet, to newer, cleaner vehicles combined with the use of reformulated gasoline will ensure continued lower carbon monoxide emissions from motor vehicles for the CMSA during October, March and April.

While the established guidance bases the determination of control period only on air quality monitoring data (which exists for the entire New York City CMSA for 1992 to 1995), EPA believes that it is prudent also to provide a technical analysis further supporting the reduction of oxygen content during the shoulder months in the area. To support the contention that in future years, starting with 1996, without sales of gasoline oxygenated to 2.7 percent, but with implementation of federal reformulated gasoline (RFG) and enhanced I/M combined with vehicle turnover carbon monoxide emissions will continue to be lower during October, March and April in the area, EPA performed a series of computer model runs. Since the first observance after the implementation of the oxygenated fuels program of low CO levels during those months was in 1993, average vehicle emissions from that year were used as an upper limit in determining the adequacy of removal of the higher oxygen content in October, March and April.

The comparison was performed utilizing the most current version of EPA's emission factor model for mobile sources, MOBILE5a. All modeling assumed implementation of RFG (with 2.0 percent oxygen content) for 1995 and later, and for 1996 and future years, the effect of an enhanced I/M program are included. MOBILE5a variables such as vehicle speeds and a vehicle miles traveled growth rate were supplied by the New York State Department of Environmental Conservation. For further details regarding the MOBILE5a runs and the subsequent comparisons, the reader is referred to the technical support document. Modeling shows that removing oxygenated gasoline (to 2.7 percent) but accounting for the effects of RFG, enhanced I/M and vehicle turnover, vehicle emissions of CO, through calendar year 2020 (based on an average day in the CO season in each of those years), will still be at least 22.74 percent less than vehicle emissions of CO in 1993 with 2.7 percent oxygenated gasoline. Thus elimination of oxygenated gasoline program requirements in the shoulder months in the area appears to be technically sound.

Based on the proposed determination that the appropriate control period runs from November through February, EPA is proposing to approve New York's oxygenated gasoline requirement only for that four month period. This EPA action on New York's SIP revision takes into account the interaction of the current New York regulation and the RFG regulation promulgated by EPA on February 16, 1994. During the entire seven month period of October through April, the current New York standard for oxygen content in the New York portion of the New York City CMSA is a minimum of 2.7 percent oxygen by weight. The same New York portion of the New York City CMSA is also subject to RFG requirements, which include a year-round oxygenate standard of 2.0 percent. 40 CFR section 80 subpart D. As discussed below, the RFG requirements act to preempt an extension of the state oxygenated gasoline provisions beyond the four month period prone to high ambient concentrations of CO.

EPA's authority to regulate fuels and fuel additives is found in section 211 of the Clean Air Act. Under section 211(c)(1), the Administrator has the authority to control or prohibit the manufacture and sale of fuels and fuel additives on the grounds of danger to public health or impairment of emissions control devices. Section 211(c)(4) provides that where the Administrator has set such a control or prohibition under section 211(c)(1) applicable to a characteristic or component of a fuel or fuel additive, no state may set a control or prohibition respecting that characteristic or component, unless the state control or prohibition is identical to the federal control or prohibition. This provision preempts state fuel controls that are nonidentical to federal section 211(c)(1) controls on the same characteristic or component.

EPA promulgated the RFG program under the authority of sections 211(k) and 211(c)(1) [59 FR 7716, February 16, 1994]. RFG must contain 2.0% oxygen content by weight, and it is required year-round in the New York City CMSA. In the absence of section 211(m), section 211(c)(4) would preempt states from establishing their own minimum oxygen content requirements different from the RFG requirements in RFG areas. Because section 211(m) is a specific, more stringent requirement, it overrides the general preemption provision, and states are not preempted from complying with section 211(m) in RFG

areas. However, states are preempted from setting nonidentical controls or prohibitions on oxygen content in RFG areas to the extent that such controls or prohibitions are not mandated by section 211(m).

In this notice, EPA is proposing to determine that the New York City CMSA is prone to high ambient concentrations of carbon monoxide during the four month period of November through February. Section 211(m) only requires states to adopt 2.7% oxygenated gasoline requirements for the period prone to high ambient concentrations of carbon monoxide, as determined by the Administrator. Thus, upon finalization of EPA's proposed determination, section 211(m) would only require New York to adopt a 2.7% minimum oxygen content standard for four months. The RFG oxygen content requirement preempts any state from prescribing or enforcing oxygen content requirements in this area that go beyond what is mandated by section 211(m). Because New York would be preempted from enforcing the additional months of October, March and April, EPA is only proposing to approve New York's oxygenated fuel requirements for the months of November through February in the counties of Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk. EPA is publishing concurrently with this notice a Notice of Proposed Rulemaking to approve Connecticut's oxygenated gasoline SIP submission. That notice proposes to establish the same four-month control period for the Connecticut portion of the New York-New Jersey-Connecticut CO nonattainment area. New York's four-month control period will be consistent with Connecticut's four-month control period.

Through a letter dated August 11, 1995 from New York State Department of Environmental Conservation Deputy Commissioner David Sterman to EPA Regional Administrator Jeanne Fox, the State of New York has communicated to EPA their intent to revise Subpart 225–3 to reflect the shorter control period, identical to the control period EPA is proposing to approve. In the same letter, New York requests EPA to revise its control period guidance to shorten the period to four months. Rather than revising the guidance, in this proposal EPA is applying the guidance to make a determination that the appropriate control period for this area is four months. EPA believes it is appropriate to approve New York's oxygenated fuel requirement for only four of the seven months provided in New York's submission because this approval would not increase the stringency of the State submission and conforms with the State's intended revisions to the regulation. Also, section 110(a)(2)(A) requires SIPs to include ''enforceable * * * control measures.'' EPA only has authority to approve the enforceable portion of the State submission, which, upon finalization of EPA's proposed determination, would correspond to a four month control period.

Transfer Documents

New York has included requirements related to transfer documentation in its regulation. These transfer document requirements enhance the enforcement of the oxygenated gasoline regulation, by providing a traceable record for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation. New York has provided for a comprehensive penalty schedule in accordance with EPA guidance. In addition to having authority to assess a civil administrative penalty, the State has authority to use further measures such as issuance of abatement orders.

Waiver Provisions

EPA is proposing to not approve sections 225–3.8 and 225–3.9(a), which would allow the Commissioner of the Department of Environmental Conservation, upon application, to grant waivers from the State's minimum oxygen content requirement, and the minimum Reid vapor pressure (RVP) requirement, respectively, due to a shortage of gasoline which meets those requirements.

In its revision to section 225–3.8, the State revised the RVP waiver provision originally approved by EPA at 54 FR 26030 on June 21, 1989. At the time, New York had adopted its own summertime RVP standards, more stringent than national standards, as part of an initiative on the parts of northeastern states to make progress toward achieving the National Ambient Air Quality Standard for ozone. Since that time, the national RVP standards have been lowered to the same levels as were initiated by New York in 1989. Because the State's RVP standards are again equal to EPA's national standards and because gasoline RVP is regulated on the Federal level, New York can no longer effectively grant waivers for RVP. To avoid confusion that EPA's approval of the New York RVP requirement might mean that State waivers would waive the Federal requirements, EPA is not approving the State's waiver provision (section 225–3.8).

EPA is also proposing to not approve section 225–3.9(a), which allows the State to grant waivers of the minimum oxygen content requirement. Generally, EPA does not approve state variance or waiver provisions in SIP submissions that would allow the state to grant waivers without EPA approval. To the extent that a waiver provision would allow a state to exempt a source from compliance required by the statute, such a waiver could be inconsistent with the applicable statutory requirements. However, in guidance for oxygenated fuels programs, EPA has identified circumstances under which the Agency may approve a very narrow state variance provision authorizing the state to allow supply of nonconforming gasoline due to extraordinary circumstances. See Guidelines for Oxygenated Gasoline Credit Programs under section 211(m) of the Clean Air Act as Amended. The guidance establishes five conditions to be included in an approvable variance provision. One of these conditions is that the ''refiner agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable.'' The New York variance provision does not include this requirement. This is a key condition because it reduces the likelihood that granting of a variance would detrimentally affect the environment. Given this deviation from the conditions specified in the guidance, EPA believes that the New York variance provision is not approvable because the limits of the discretion do not clearly meet EPA policy for approving such an exercise of discretion, EPA is not approving this waiver provision. Such waivers would need to be approved by EPA as SIP revisions consistent with EPA policy on such waivers.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. New York has incorporated by reference EPA sampling methods.

Labeling

EPA requires the labeling of gasoline pumps and has strongly recommended that states adopt their own labeling regulations, consistent with the federal regulation. New York has adopted labeling regulations consistent with the federal regulation.

Credit Program

EPA guidance announced the availability of an optional oxygenated gasoline credit program (57 FR 47849, October 20, 1992), where marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required. New York has opted not to implement such a credit program and requires a per-gallon minimum oxygen content of 2.7% during the control period.

II. Proposed Action

EPA's review of Subpart 225–3 indicates that the State has adopted an oxygenated gasoline regulation in accordance with the requirements of the Clean Air Act. Therefore, EPA is proposing to approve New York's Subpart 225–3 oxygenated gasoline program as a revision to the State's SIP. EPA is proposing not to approve sections 225–3.8 and 225–3.9(a), which unduly allow the State's Commissioner to grant waivers from the minimum oxygen content and minimum RVP requirement, respectively.

Vehicle Miles Travelled Forecast

Section 187(a)(2)(A) of the Clean Air Act requires moderate carbon monoxide nonattainment areas, such as that portion of New York included in the ''New York-Northern New Jersey-Long Island'' carbon monoxide nonattainment area, to submit a SIP revision that forecasts vehicle miles travelled through the year 1995. In addition, annual reports and annual updates are required by the State.

The vehicle miles travelled forecast must meet several requirements. It must estimate the vehicle miles travelled from 1990 through 1995 using a method acceptable to EPA, must be conducted in the appropriate geographic area and must provide for annual updates of the forecasts and annual reports on the extent to which the forecasts were accurate, as well as estimates of actual vehicle miles travelled in each year for which a forecast was required (57 FR 13532, April 16, 1992). Moreover, the state should develop the vehicle miles travelled forecast based on EPA guidance.

Contingency measures are to be implemented in a case where the actual annual vehicle miles travelled or the updated forecast contained in an annual report exceeds the most recent prior vehicle miles travelled forecast by an acceptable margin of error (5.0 percent in 1994, 4.0 percent in 1995, and 3.0 percent thereafter) and/or if estimated actual vehicle miles travelled or forecasted vehicle miles travelled exceeds a cumulative 5 percent cap above the attainment demonstration.

The estimated vehicle miles travelled for 1990 and 1991 are 130.7 and 134.6 million miles per day, respectively. In addition, the future forecasts were (in million miles per day) 138.5 for 1992, 142.5 for 1993, 146.4 for 1994, and 150.3 for 1995.

On November 15, 1994, New York submitted a vehicle miles travelled tracking report for the State's 1992 New York City Metropolitan area Carbon Monoxide SIP. This report showed that for 1990, the actual vehicle miles travelled was 130.8. The actual vehicle miles travelled for 1991 to 1993 were below the original forecast: 131.8 for 1991; 135.8 for 1992 and 137.1 for 1993.

New York has submitted documentation satisfying these requirements and EPA, therefore, proposes approval of New York's vehicle miles travelled forecast SIP revision.

Contingency Measures

Section 187(a)(3) of the Clean Air Act requires that states adopt contingency measures to take effect without further action by the Administrator or the state if the state fails to attain the NAAQS by the required date or if any estimate of actual vehicle miles travelled in the nonattainment area or any updated forecast of vehicle miles travelled contained in an annual report for any year prior to attainment is exceeded beyond the allowable limit as discussed in the vehicle miles travelled forecast section. Contingency measures should be capable of reducing vehicle miles travelled or resultant emissions by an amount equal to the projected annual growth rate for vehicle miles travelled (57 FR 13532, April 16, 1992). New York identified two contingency measures, the employee commute option program and winter gasoline volatility reductions, to fulfill this requirement. These programs would both act as contingency measures for failure to attain the carbon monoxide standard or for exceeding the vehicle miles travelled forecast.

1. Employee Commute Option Program

New York is required by section 182(d)(1)(B) of the Clean Air Act to submit its Employee Commute Option program as part of its ozone nonattainment SIP. New York's program applies to employers with 100 or more employees who arrive at the workplace between the hours of 6 and 10 a.m. The goal of this program is to increase the average passenger occupancies by 25% above the average for all vehicles arriving to all workplaces within the zone. This would decrease the amount of automobiles arriving at the workplace, and therefore, decrease the vehicle miles travelled.

New York enacted enabling legislation on August 9, 1993 and the New York State Department of Transportation adopted regulations on April 6, 1994 to implement the program. New York then submitted a SIP revision on June 6, 1994 that contained an adopted employee commute option program. EPA will be taking action on the employee commute option program submittal as a requirement of the ozone SIP in a separate **Federal Register** notice since there are specific requirements an employee commute option program must meet for an ozone SIP but not for contingency measures in a carbon monoxide SIP.

2. Winter Time Gasoline Volatility

New York identified Winter Time Gasoline Volatility as an additional contingency measure. New York State's Subpart 225–3 ''Fuel Composition and Use—Volatile Motor Fuel'' permits the commissioner to set a winter RVP level for gasoline if such a level is necessary for air quality purposes. This regulation was adopted on June 30, 1993.

EPA is proposing to approve the State's use of the winter time gasoline volatility program as a carbon monoxide contingency measure because it is an adopted measure that will serve to reduce emissions of carbon monoxide. Also, section 211(c)(4) does not preempt the State from adopting a limit on gasoline RVP in the winter time. Under section 211(c)(4), states are preempted from prescribing any control or prohibition respecting any characteristic or component of a fuel, where there is a nonidentical Federal control or prohibition applicable to such characteristic or component. There are two sources of Federal controls on RVP, the Phase II Federal RVP controls promulgated under section 211(h) and section 211(c)(1), and the Federal RVP controls for reformulated gasoline promulgated under section 211(k) and section 211(c)(1). Both of these Federal RVP controls apply only in the summer months. There is no Federal RVP control applicable to gasoline in the winter time, and thus no Federal preemption of the New York winter time RVP control.

Although New York identified two acceptable contingency measures, only one is approvable by EPA at this time. Therefore, EPA proposes to approve the winter time gasoline volatility program as an adequate contingency measure should New York fail to attain the carbon monoxide standard or exceed the vehicle miles travelled forecast. Action on the employee commute option program will be taken in a separate **Federal Register** notice.

Carbon Monoxide Emission Inventory

New York submitted a carbon monoxide emission inventory on November 15, 1992 as required by section 187(a)(1) and as described in section 172(c)(3) of the Clean Air Act. Additional inventory information was submitted in January and March of 1993.

The emission inventory is for a typical carbon monoxide season weekday occurring during December, January, and February and represents a comprehensive, actual inventory of all carbon monoxide emission sources in the New York Metropolitan area. It includes emissions from point, area, and mobile sources (see 1990 base year carbon monoxide emissions summary in Table 1).

TABLE 1.—SUMMARY OF 1990 BASE YEAR CARBON MONOXIDE EMISSIONS BY SOURCE CATEGORY FOR NEW YORK

Source category	CO emissions (tons/day)
Point	31.26
Area	380.16
Non-Road Mobile	577.71
On-Road Mobile	4138.02
Total	5127.15

The inventory was developed according to EPA guidance and has been quality assured. Sources that emit in excess of 100 tons per year of carbon monoxide are defined as point sources. Stationary sources that emit below this threshold are too small to be considered point source and are, therefore, considered to be area sources. The area and off-highway mobile sources include such categories as stationary source fuel combustion, aircraft, marine vessels, and railroads. Highway mobile source emissions were calculated using an updated version of EPA's MOBILE 4.1 model (MOBILE5). Input parameters to this model included vehicle miles travelled, speed, temperature, and registration distribution.

EPA proposes to approve New York's 1990 base year emission inventory for carbon monoxide.

New Source Review Regulation

Section 173 of the Clean Air Act requires states to submit new source review (NSR) revisions that, among other things, incorporate new offset ratios and applicability limits in new source review permitting regulations by November 15, 1992.

EPA will address New York's NSR regulation in a separate **Federal Register** notice.

Multi-State Coordination Letter

Section 187(e) of the Clean Air Act establishes the requirements for ''multi-state carbon monoxide nonattainment areas,'' which are defined as single carbon monoxide nonattainment areas that cover more than one state. To satisfy this requirement, states must develop and submit to EPA a joint workplan to demonstrate early cooperation and integration. This workplan can be in the form of a letter co-signed by all states in the nonattainment area, or, EPA has decided, it can consist of signed individual letters from each of the states. New York submitted its letter, containing a detailed schedule of milestones and a commitment to coordinate with EPA and each of the states involved, on September 16, 1992.

Therefore, EPA proposes to find that New York has fulfilled this requirement and proposes approval of this SIP revision.

Downtown Brooklyn Master Plan

On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area. This submittal consisted of a plan that was developed in 1987 by the Commissioners of the New York City Departments of Transportation and Environmental Protection called the Downtown Brooklyn Master Plan (DBMP). The DBMP committed the City to implement 13 capital projects in order to reduce high levels of carbon monoxide at intersections in Downtown Brooklyn. The submittal was found to be administratively complete on November 19, 1990.

The 13 projects that made up the DBMP were devised to alleviate predicted violations of the carbon monoxide standard that resulted from several development projects in Downtown Brooklyn. The effects of the individual projects that made up the DBMP were evaluated as a package as part of EPA's review of the Environmental Impact Statement for the Metrotech project. EPA has determined that, taken together, the projects would eliminate the predicted violations.

In its submittal of November 15, 1992 the State included a status report on the DBMP. This status report was updated in a July 14, 1994 letter from Thomas Allen, Department of Environmental Conservation. The status of the DBMP as of July 1994 is displayed in the following table. It shows that, of the 13 capital projects that made up the original plan, five have been completed, one has been partially completed, and two were found to be unnecessary. Of the six projects yet to be completed, two were expected to be completed prior to December 31, 1995. The remaining four projects are unlikely to be completed by that date.

The State is free to revise this element of the SIP, either by demonstrating that the entire DBMP is no longer necessary or by submitting another program of measures equivalent to those it wants to remove.

EPA proposes to approve the DBMP as a revision to the SIP.

TABLE 2.—DOWNTOWN BROOKLYN MASTER PLAN

Downtown Brooklyn master plan status as of July 1994	Original completion date	ISOPIA region II 27–Jul-94
Project		Status
Capital Project Hwk 197A2, Flatbush Ave: 4th Ave to Nassau St, Jay St: Fulton St to Sands St, Willoughby St: Flatbush Ave to Gold St.	31–Dec-91	Completed 12/91.
Capital Porject Hwk 565, Jay St: Fulton St to Sands St	31–Dec-91	Completed 12/91.
Capital Project Hwk 739, Willoughby St: Flatbush Ave to Gold St	31–Dec-91	Completed 12/91.
Capital Project Hwy 197A3R, Flatbush Ave: Atlantic Ave to 4th Ave, Atlantic Ave: Flatbush Ave to 4th Ave, 4th Ave: Pacific St to Flatbush Ave[1].	30–Jun-95	Delayed due to MTA station reconstruction. Estimated bid date Spring 1995.

TABLE 2.—DOWNTOWN BROOKLYN MASTER PLAN—Continued

Downtown Brooklyn master plan status as of July 1994	Original completion date	ISOPIA region II 27–Jul-94
Project		Status
Capital Project Hwk 197G, Ashland Place: Fulton St to Dekalb Ave	30–Jun-93	Completed 6/93.
Capital Project Hwk 197B, Concord St: Flatbush Ave to Gold St		Capital project no longer necessary.
Capital Project Hwk 197C, Concord St: Gold St to Navy St		Capital Project no longer necessary.
Capital Project Hwk 197D, Gold St: Nassau St to Tillary St	30–Mar-89	Completed 3/89.
Capital Project Hbk 667A, Adams/Tillary Underpass, Adams St SVC Rd N/B: Willoughby to Sands, Adams St SVC Rd S/B: Willoughby to Red Cross [1].	31–Dec-95	Project to be re-evaluated.
Capital Project Hbk 667B, BQE: W/B off Ramp @ Ashland Place [1]	31–Dec-95	Timeframe is significantly past 1995.
Capital Project Hwk 565A, Tillary/Jay St intersection double left turns [1]	31–Jan-95	Project tied to underpass construction.
Capital Project Hwk 565A, Atlantic Ave W/B: Ft Greene Pl to Flatbush [1]	31–May-93	MTA approval (delayed) needed to begin construction.
Capital Project ED 75 (Project 201; Subproject E 175):		
A: Atlantic Ave E/B: 4th Ave to Flatbush Ave	30–Jun-95	Construction Completed.
B: 4th Avenue N/B: Pacific St to Atlantic Ave	30–Jun-95	Construction Completed.
C: Vanderbilt Ave @ Atlantic Ave [1]	31–Mar-94	Awaiting land acquisition
D: Atura Streets [1]	31–Mar-94	Under Construction. Completion 9/94.

[1] Projects not yet completed.

Summary

EPA is proposing approval of New York's vehicle miles travelled forecast, contingency measures, carbon monoxide emission inventory, multi-state coordination letter, and Downtown Brooklyn Master Plan as revisions to its carbon monoxide SIP. EPA also proposes approval of New York's winter time gasoline volatility program as a contingency measure. The employee commute option program will be acted upon in a separate **Federal Register** notice. In addition, with the exception of sections 225–3.8 and 225.3.9(a), EPA is proposing to approve the oxygenated gasoline program in the New York City consolidated metropolitan statistical area. This program also includes a provision for oxygenated fuels to serve as a contingency measure in the Syracuse metropolitan statistical area. New York has recently updated their enhanced inspection and maintenance submittal which EPA is currently reviewing. Therefore, action on that program, along with the attainment demonstration, which relies on the enhanced inspection and maintenance program, will be taken in a separate **Federal Register** document.

EPA will address the new source review regulation and transportation and conformity rules in separate **Federal Register** documents.

Nothing in this action 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 the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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. Moveover, 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 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under section 187 of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action would impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C 7401–7671q.

Dated: September 6, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–22957 Filed 9–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5293–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Clothier Disposal site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Clothier Disposal site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan ((NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Clothier Disposal site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Clothier Disposal site from the NPL may be submitted on or before October 15, 1995.

ADDRESSES: Comments concerning the deletion of the Clothier Disposal site from the NPL may be submitted to: Herbert H. King, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th floor, New York, NY 10007–1866.

Comprehensive information on the Clothier Disposal site is contained in the EPA Region II public docket, which is located at EPA's Region II office (the 18th floor), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. King at (212) 637–4268.

Background information from the Regional public docket is also available for viewing at the Clothier Disposal site's Administrative Record repository located at: Fulton Library, 160 South First Street, Fulton, NY 13069.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert H. King, (212) 637–4268.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region II announces its intent to delete the Clothier Disposal site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions (RAs) financed by the Hazardous Substances Superfund Response Trust Fund (the ''Fund''). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed RAs, if conditions at such site warrant action.

EPA will accept comments concerning the Clothier Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until October 15, 1995).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses how the Clothier Disposal site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or

2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the Clothier Disposal site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30)-day public comment period on the deletion package starting on September 15, 1995 and concluding on October 15, 1995.

4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to the public by EPA Region II.