ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5872–8]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: State Commitments to National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: For several years, EPA, the Ozone Transport Commission (OTC) States, the auto manufacturers and other interested parties have been developing a voluntary clean car program called the National Low Emission Vehicle (''National LEV'') program, which is designed to reduce smog and other pollution from new motor vehicles. National LEV would be a regulatory program that would be enforceable in the same manner as any other federal new motor vehicle program, except that it can only come into effect if the OTC States and the auto manufacturers agree to it.

A significant amount of progress has been made in developing this program. In October, 1995, EPA proposed the National LEV program. In June of this year, EPA issued a final rule setting forth the basic framework and regulatory provisions of the National LEV program. EPA will resolve the remaining issues in a supplemental final rule it intends to issue this fall. This supplemental notice of proposed rulemaking (SNPRM) seeks comment on some of the remaining issues to be addressed in the supplemental final rule.

DATES: Written comments on this SNPRM must be submitted by September 22, 1997 to the address specified below. EPA will hold a public hearing on this SNPRM on September 8, 1997 if one is requested by August 29, 1997. This hearing, if requested, would begin at 9:00 a.m. and continue until 4:30 p.m. or until all commenters have the opportunity to testify.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) to Public Docket No. A–95–26, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone 202–260–7548; Fax 202–260–4400). Materials relevant to this final rule have been placed in Public Docket No. A–95–26. The docket is located at the above address, in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:00 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

Members of the public may contact the person indicated below to find out whether a hearing will be held and, if so, the exact location. Requests for a public hearing should be directed to the contact person indicated below. The hearing, if requested, will be held in the Ann Arbor, Michigan metropolitan area.

For further information on electronic availability of this SNPRM, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Karl Simon, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone (202) 260–3623; Fax (202) 260–6011; e-mail simon.karl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture and sell motor vehicles in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in § 86.1701–97 of the rule published in the June 6, 1997 **Federal Register** (62 FR 31192). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, regulatory support document, and other related documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)

2. http://www.epa.gov/OMSWWW/lev-nlev.htm

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Outline

The preamble is organized into the following sections.

II. Background [1]

This Supplemental Notice of Proposed Rulemaking (SNPRM) is another step towards a voluntary clean car program (''National LEV'') that will help control emissions nationwide as well as in the northeastern states. As discussed in previous **Federal Register** documents,[2] there have been a number of regulatory and other steps in the development of this program. The process will conclude with EPA establishing all the regulations necessary to set up the voluntary clean car program, which will then come into effect if the auto manufacturers and the OTC States commit to it. In June of this year, EPA published a final rule setting forth the framework for the program, including the specific standards that would apply to new motor vehicles if manufacturers opted in. See 62 FR 31192 (June 6, 1997) (''Final Framework Rule''). This SNPRM solicits comments on specified program issues that EPA must resolve to finalize the regulations for the National LEV program.[3] Once EPA issues that supplemental final rule, it will be up to the OTC States and the auto manufacturers to determine whether the program comes into effect.

Under the National LEV program, auto manufacturers would have the option of agreeing to comply with tailpipe standards that are more stringent than EPA can mandate prior to model year (MY) 2004. Once manufacturers commit to the program, the standards will be enforceable in the same manner that other federal motor vehicle emissions control requirements are enforceable. See the Final Framework Rule at 62 FR 31201–31223 for a detailed discussion of the program structure, tailpipe and related standards, and legal authority for and enforceability of National LEV. Manufacturers have indicated their willingness to volunteer to meet these tighter emissions standards if EPA and the northeastern states (i.e., those in the Ozone Transport Commission (OTC) or the ''OTC States'') agree to certain conditions, including providing manufacturers with regulatory stability and reducing regulatory burdens by harmonizing federal and California motor vehicle emissions standards.

The National LEV program has been developed through an unprecedented, cooperative effort by the OTC States, auto manufacturers, environmentalists, fuel providers, EPA and other interested parties. The OTC States and environmentalists provided the opportunity for this cooperative effort by pushing for adoption of the California Low Emission Vehicle (CAL LEV) program throughout the northeast Ozone Transport Region (OTR). Under EPA's leadership, the states, auto manufacturers, environmentalists, and other interested parties then embarked on a process to develop a voluntary National LEV program, a process marked by extensive public participation and a focus on joint problem solving. See the Final Framework Rule at 62 FR 31199 and the NPRM at 60 FR 52739–52740 for further discussion of public participation in the National LEV decisionmaking process.

National LEV will provide public health and environmental benefits by reducing air pollution nationwide. Both inside and outside the OTR, National LEV will reduce ground level ozone, the principal harmful component in smog, as well as emissions of other pollutants, including particulate matter (PM), benzene, and formaldehyde. The Final Framework Rule contains a substantive discussion on the health and environmental benefits of the National LEV program. See 62 FR 31195. EPA has determined that the National LEV program will result in emissions reductions in the OTR that are equivalent to or greater than the emissions reductions that would be achieved through OTC State Section 177 Programs. National LEV will also provide manufacturers regulatory stability and reduce regulatory burden by harmonizing federal and California motor vehicle standards. This will reduce testing and design costs for motor vehicles, as well as allow more efficient distribution and marketing of vehicles nationwide. See the Final Framework Rule at 60 FR 31195–31197 and 31224 for further discussion of the benefits of the National LEV program.

In addition to the national public health benefits that would result from National LEV, the program has been motivated largely by the OTC's efforts to reduce motor vehicle emissions either by adoption of the CAL LEV program throughout the OTR or by adoption of the National LEV program. One of the OTC States' efforts was a petition the OTC filed with EPA. On December 19, 1994, EPA approved this petition, which requested that EPA require all OTC States to adopt the CAL LEV program (called the Ozone Transport Commission Low Emission Vehicle (OTC LEV) program). See 60 FR 4712 (January 24, 1995) (''OTC LEV Decision''). See the Final Framework Rule at 60 FR 31195 for a summary of this decision. In February of this year, the U.S. Court of Appeals for the District of Columbia affirmed states' rights to adopt the CAL LEV program, but reversed EPA's decision requiring the OTC States to do so. Some, but not all, OTC States have adopted CAL LEV programs to date.

Given statutory constraints on EPA, National LEV will be implemented only if it is agreed to by the OTC States and the auto manufacturers. EPA does not have authority to force either the OTC States or the manufacturers to sign up to the program. EPA cannot require the auto manufacturers to meet the National LEV standards, absent the manufacturers' consent, because section 202(b)(1)(C) of the Clean Air Act (CAA, or ''the Act'') prevents EPA itself from mandating new exhaust standards applicable before model year 2004. The auto manufacturers have indicated that they would be willing to opt into National LEV only if the OTC States make certain commitments, including committing to allow the manufacturers to comply with National LEV in lieu of Section 177 Programs. EPA cannot require the OTC States to make such commitments (although EPA can issue regulations to help make the commitments enforceable). Thus, National LEV cannot come into effect

[1] Although this section contains a brief summary of the National LEV program and the process that led up to it, this SNPRM assumes that the reader has an in-depth understanding of the National LEV program and is best read as a supplement to the October, 1995, NPRM and the June, 1997, Final Framework Rule. Readers should review those documents for in-depth discussion of the program, the process and other background information.

[2] See 60 FR 4712 (Jan. 24, 1995), 60 FR 52734 (Oct. 10, 1995), 62 FR 31192 (June 6, 1997).

[3] This SNPRM supplements EPA's October 10, 1995, proposal for the National LEV program (60 FR 52734) (''NPRM'').

absent the agreement of the auto manufacturers and the OTC States.

Over the past several years, the OTC States and the auto manufacturers have conducted negotiations to develop an agreement on National LEV to be contained in a Memorandum of Understanding (MOU). The parties have reached agreement on most provisions of the National LEV program. Each side has sent EPA an MOU that it has initialed, indicating its agreement with the National LEV program as contained in that Memorandum of Understanding.[4] Although there are differences in the two Memoranda, they show that agreement has been reached between the OTC States and the auto manufacturers on most of the provisions of the National LEV program. Based on the MOUs provided to the Agency, EPA issued the Final Framework Rule on June 6, 1997, setting the framework for and describing most of the elements of the National LEV program.

Although the parties had hoped to jointly sign a comprehensive MOU affirming their mutual agreement on the National LEV program, the parties now agree that further discussions are unlikely to result in resolution of the last outstanding issues. Nonetheless, EPA and the parties believe that National LEV would provide substantial public health and environmental benefits. Failure to come to agreement on a National LEV program would be a significant lost opportunity.

EPA believes that there is sufficient common ground between the parties to provide a basis for a National LEV program that all parties could agree to opt into, even if the parties do not first come to agreement on an MOU laying out the elements of that program. Therefore, EPA intends to issue a supplemental final rule that would allow the parties to opt into National LEV even without final agreement on an MOU. In that final rule, EPA plans to resolve the remaining issues. To do so, EPA must first take comment on the issues presented in this notice. EPA believes that finalizing a program for the OTC States and manufacturers to evaluate as a whole presents the greatest likelihood that the country will achieve the benefits of National LEV.

EPA is proposing to resolve most of the outstanding issues in the National LEV program. EPA believes that a targeted proposal will speed the rulemaking process, give the parties a better sense of the likely parameters of the final program, and help to focus attention on the few key critical issues that remain. Nevertheless, in the few areas where the OTC States and manufacturers are farther apart in their positions and in the areas where EPA needs more factual information to support a decision, the Agency is explicitly taking comment on several options.

In this SNPRM, EPA is making proposals and soliciting public comment on issues relating to how the OTC States will voluntarily opt into the National LEV program and commit to allow motor vehicle manufacturers to comply with the National LEV program in lieu of state Section 177 Programs. These issues include the duration of the OTC State commitments, the instruments and process through which the OTC States will commit to the program, and the substantive details of their commitments.

EPA is also proposing resolutions of several other outstanding structural details of the National LEV program. These provisions include the timing of OTC State and auto manufacturer opt-ins to the National LEV program, incentives for the parties to keep their commitments to the National LEV program and conditions under which OTC States and manufacturers could exit the program (''offramps''), and the start date of the National LEV program.

In addition, EPA is proposing to address a number of technical issues not fully resolved in the Final Framework Rule. These include provisions relating to how the off-cycle supplemental federal test procedure would apply to National LEV vehicles, provisions to address manufacturer concerns regarding the effect of in-use fuels on National LEV vehicles, and provisions relating to banking and trading issues. EPA is soliciting comment solely on the issues raised in this notice and any closely related elements of the final rule that would need to be modified in accordance with today's proposals. Except to the extent that resolution of an issue raised in this notice would necessitate modifications of the Final Framework Rule, EPA is not reopening that final rule for further public comment.[5]

III. National LEV Start Date

Although EPA had proposed model year MY1997 as the start date for National LEV,[6] in the Final Framework Rule EPA used MY1997 only as a placeholder for the start date of National LEV. EPA noted that MY1997 was no longer a reasonable start date due to changes in circumstances after the proposal. Today EPA proposes that the National LEV program start in MY1999. This would still produce VOC and NO_X emissions reductions from National LEV that are equivalent to or exceed the emissions reductions that would occur in the OTR in the absence of National LEV, as discussed below in section IV.

As initially proposed by the manufacturers and negotiated with the OTC States, National LEV was designed to begin in MY1997. Thus, EPA used MY1997 as the program start date in modeling the volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions reductions from National LEV and in finding that those reductions were equivalent to or greater than the emissions reductions expected from OTC LEV, assuming that OTC LEV was implemented by the OTC States by the date required under the OTC LEV state implementation program (SIP) call (i.e., all OTC States were to have state LEV programs effective in MY1999). In addition, the MOUs initialed by the OTC States and the manufacturers assumed a program start date of MY1997. However, as EPA noted in the Final Framework Rule, changed circumstances have since made a National LEV start date of MY1997 unrealistic. Thus, in the Final Framework Rule, EPA used MY1997 as a placeholder for the start date for National LEV, but noted that it would take comment on a realistic start date at a later time.

Several factors make a National LEV start date of MY1997 unrealistic. Given the delays that have occurred in reaching agreement between the manufacturers and the OTC States, and the resulting delays in the National LEV rulemaking, manufacturers are unlikely to be able to opt into National LEV prior to late in calendar year 1997. By then, manufacturers will have already completed EPA certification and agreements with suppliers for the MY1998 vehicles. A MY1997 start date would effectively require manufacturers to begin the program with debits for MY1997 and probably for MY1998 as

[4] See Docket No. A–95–26, IV–G–31 and IV–G–34.

[5] The supplemental final rule will resolve the issues raised in this SNPRM, the issues that were raised in the NPRM and not resolved in the Final Framework Rule, and any closely related elements of the Final Framework Rule that would need to be modified in accordance with today's proposal. The reader should be aware that, although the CAA does not require publication of proposed regulatory text, EPA has included the proposed regulatory text for most, but not all, of the proposed program elements. Also, for some provisions of the Final Framework Rule where EPA is not proposing a change in the language but is merely reordering the provisions, EPA has not reproduced those provisions here. In particular, please note that EPA is not proposing to modify or drop 40 CFR 86.1705(g)(5) in the existing final regulations. While a new provision in today's proposed regulations is designated § 86.1705(g)(5), the existing provision will be renumbered in the supplemental final rule.

[6] 60 FR 52746 (Oct. 10, 1995).

well, and then make up those debits over the next few model years. EPA does not believe it is reasonable to have the National LEV program start with some manufacturers having debits from the beginning, which will be difficult to erase as the fleet average NMOG standards become more stringent.

Moreover, the court decision vacating EPA's OTC LEV decision removed the legal requirement for National LEV to produce emissions reductions at least equivalent to those that would be produced by OTC LEV under EPA's SIP call. Nor does EPA believe there is any compelling practical need to begin National LEV effective MY1997. Because many of the OTC States will not have Section 177 Programs in place effective MY1999, and there is no longer a SIP call requiring such programs, a MY1997 start date for National LEV is not necessary to produce a quantity of emissions reductions equivalent to or greater than those that would be produced in the absence of National LEV through the alternative approach of individual OTC State adoption of Section 177 Programs. Even if National LEV begins in MY1999, the program will still produce emissions benefits in the OTR at least equivalent to and likely significantly greater than the alternative, as well as producing substantial additional emissions reductions for the rest of the country.

EPA is proposing that National LEV start with MY1999. All requirements set forth in the Final Framework Rule for MY1997 and MY1998 would be dropped. National LEV would start in MY1999 with all the requirements set forth in the Final Framework Rule for MY1999 (e.g., non-methane organic gas (NMOG) average of 0.148 grams/mile for light-duty vehicles and light light-duty trucks (0–3750 loaded vehicle weight (LVW)) in the OTR). In proposing a start date of MY1999, EPA is proposing to drop the first two years of the National LEV program set forth in the Final Framework Rule—it is not proposing that the entire program be delayed two years. Thus, the 2001 nationwide NMOG fleet average of 0.075 g/mi for light-duty vehicles and light light-duty trucks (0–3750 LVW) would not be changed. EPA has not included in today's notice proposed new regulatory language to reflect this proposed start date due to the straightforward nature of the necessary changes to the regulations.[7]

EPA is also taking comment on allowing manufacturers to sell California-certified vehicles instead of National LEV vehicles throughout the Northeast Trading Region (NTR) for MY1999 and MY2000. Manufacturers are concerned that they would have insufficient time to produce and certify National LEV vehicles for these two model years given the likely effective date of the National LEV program and their typical production planning cycles, which call for determining models to be produced and arranging for parts with suppliers in advance of actual vehicle production. Allowing manufacturers to increase their production of California-certified vehicles and sell them throughout the NTR could help manufacturers meet the National LEV fleet average NMOG standards for these two model years. To date, EPA has required manufacturers to certify to federal National LEV standards and requirements, rather than accepting California-certified-vehicles alone, to ensure that all federal certification requirements are met. While National LEV harmonizes most of the elements of the federal and California motor vehicle programs, certain additional elements of the federal program would not necessarily be met by California-certified vehicles.

IV. National LEV Will Produce Larger VOC and NO_X Emission Reductions in the OTR Compared to OTC State Adopted Section 177 Programs

In the Final Framework Rule, EPA found that the National LEV program would provide greater emission reductions than those from OTC LEV (which is equivalent to state-by-state adoption of the CAL LEV program throughout the OTR). See 62 FR 31224. EPA assumed a start date of MY1997 for the National LEV program and MY1999 for the state Section 177 Programs. EPA noted at that time that it would update the modeling of benefits in the OTR to reflect realistic start date assumptions. Since the MY2001 introduction of National LEV vehicles nationwide remains unaffected by today's proposal, National LEV will continue to provide substantial emission reductions to the 37 states outside the OTR (''37 States''). EPA's modeling includes nationwide emissions inventories as well (included in Docket A–95–26).

Using realistic start dates, EPA's modeling shows that National LEV would produce larger VOC and NO_x emission reductions in the OTR than would Section 177 Programs in the OTR. This modeling is based on National LEV starting in MY1999, which EPA is proposing today, and on state Section 177 Programs going into effect as provided in the current state regulations. EPA's modeling includes a sensitivity analysis that shows National LEV would produce greater emission reductions than state Section 177 Programs even if all OTC States adopted Section 177 Programs as quickly as is realistically possible, given their current status.

EPA's updated analysis more accurately reflects expected reductions from OTC State Section 177 Programs than did the analysis described in the Final Framework Rule. EPA's previous modeling assumed that all of the OTC States had Section 177 Programs in effect for MY1999 and later. Given the two-year lead time requirement for such adoption, as specified in section 177 of the Clean Air Act, it is impossible for all OTC States to have a Section 177 Program in place for MY1999. In fact, only six states have adopted a Section 177 Program as of July 1, 1997: New York, Massachusetts, Rhode Island, Connecticut, New Jersey, and Vermont. While other OTC States are contemplating adoption of a Section 177 Program, the earliest any such adoption could become enforceable is MY2000. EPA's analysis does not assume that any other OTC State will implement a Section 177 Program. Therefore, for purposes of modeling emission benefits, EPA is capturing the current level of CAL LEV adoption in the OTR. EPA believes that this realistic assumption is the proper comparison to National LEV since legally, individual state adoption is the only manner in which California vehicles can be required in the Northeast.

EPA's modeling shows that National LEV would achieve greater emission reductions in the OTR than individual OTC State Section 177 Programs. The emission levels are listed in the table below. The modeling is based on National LEV starting in MY1999 in the OTR and MY2001 in the rest of the country. For the OTC State Section 177 Program case, EPA included only those OTC States that have adopted the CAL LEV program and will have an enforceable state program as of July 1, 1997. These states and their program start dates are New York (MY1996), Massachusetts (MY1996), Rhode Island (MY1999), Connecticut (MY1998), Vermont (MY1999), and New Jersey (MY1999). All other states would receive Federal Tier 1 vehicles. EPA did

[7] The sections in the Final Framework Rule regulations that would need to be modified to account for a start date of MY1999 include 40 CFR 86.097–1, 86.101, 86.1701–97, 86.1705–97, 86.1708–97, 86.1709–97, and 86.1710–97. In addition, section titles would need to be changed in some sections, such as 40 CFR 86.602–97, 86.1003–97, 86.1012–97, and all subpart R sections. EPA is taking comment on other changes to the Final Framework Rule regulations that need to be made to account for the change in start dates for the National LEV program.

not include existing OTC State zero emission vehicle (ZEV) sales mandates in either of its modeling runs since these mandates are not affected by the National LEV rule. ZEV sales mandates would thus have similar effects on emission levels in both modeling cases and would not affect the relative emissions benefits of National LEV compared to those of OTC State Section 177 Programs.

EPA believes its current modeling makes the appropriate assumptions and correctly estimates a realistic level of OTC State Section 177 Programs. However, to test its assumptions, EPA also ran a sensitivity analysis assuming that the seven OTC States without a Section 177 Program in place as of July 1, 1997 had adopted the program effective in MY2000, the earliest time a state that had not yet adopted a Section 177 Program could legally enforce such a program, given the two year lead time requirement in section 177 of the Act. This analysis showed that, even with all 13 OTC States having a Section 177 Program in place at the earliest possible times, National LEV still provided greater emission reductions in the Northeast.

TABLE 1.—OZONE SEASON WEEKDAY EMISSIONS FOR HIGHWAY VEHICLES IN THE OTR

[Tons/day]

Year	Pollutant	OTC state CAL LEV	National LEV
2005	NMOG	1,573	1,499
	NO_X	2,526	2,403
2007	NMOG	1,480	1,366
	NO_X	2,427	2,226
2015	NMOG	1,386	1,148
	NO_X	2,367	1,899

V. OTC State Commitments

A. Duration of OTC State Commitments

EPA is proposing that the OTC States would commit to the National LEV program until MY2006. This means that the OTC States would commit to accept manufacturers' compliance with National LEV (or equally or more stringent mandatory federal standards) as an alternative to compliance with a state Section 177 Program through MY2005. The length of the auto manufacturers' commitment was set in the Final Framework Rule. Under that rule, manufacturers that opt into the program would be bound to comply with National LEV until the first model year that manufacturers are subject to a mandatory federal tailpipe emissions program at least as stringent as the National LEV program with respect to NMOG, NO_X and carbon monoxide (CO) exhaust emissions (''Tier 2 standards''). Under section 202(b)(1)(c) of the Clean Air Act, EPA could not mandate such standards prior to MY2004. Thus, the manufacturers' commitment to National LEV lasts at least until MY2004 and could last longer.

The proposed duration of the OTC State commitments differs slightly from the duration specified in the initialed MOUs. The initialed MOUs provide that the auto manufacturers' and the states' commitments to the program would end at the same time. Under the MOU approach, the auto manufacturers' and the states' commitments would last through MY2003 and possibly through MY2005, depending on whether, by January 1, 2001, EPA had promulgated a final rule mandating Tier 2 standards at least as stringent as National LEV and effective in MY2004, MY2005, or MY2006. If EPA did not issue the specified regulations on time, then National LEV would end with MY2003 and, starting in MY2004, in any state where California or OTC LEV standards were not in place, the applicable standards for manufacturers would revert back to the federal Tier 1 standards.

In the Final Framework Rule, EPA did not accept the MOU provisions for setting the duration of the National LEV program. As it explained fully in that final rule, EPA rejected the MOU provisions because it is unacceptable to set up a program that has the country take a step backward environmentally if the Agency fails to act by a specified deadline. Instead, under the Final Framework Rule, the auto manufacturers' commitment to National LEV would continue until a mandatory national tailpipe emissions program that is at least equivalent in stringency to the National LEV program is in effect. Once EPA promulgates such a mandatory tailpipe emissions program, the manufacturers' obligation under the National LEV program would end in the first model year that the mandatory program is at least as stringent on a fleet wide basis as National LEV. Under section 202(b)(1)(C) of the Clean Air Act, this cannot occur until MY2004.

Today's proposal attempts to be as faithful to the OTC States' and auto manufacturers' intent regarding the duration of state commitments to National LEV as is possible, given that EPA did not accept the MOU provision that would have put the country back to Tier 1 if EPA failed to issue Tier 2 standards by a certain date. The MOU approach to the duration of the OTC State commitments indicates that the OTC States are willing to commit to National LEV through MY2005, if they are assured that they would continue to receive vehicles meeting LEV stringency or better standards (on average). The Final Framework Rule provisions for the duration of the auto manufacturers' commitment provides such assurance. Thus, EPA's proposed approach to duration of the OTC State commitments would not bind the states beyond what they have indicated is acceptable. Moreover, under the MOU approach to the duration of the OTC State commitments, under no circumstances would the states be bound beyond MY2005, so the manufacturers could not have expected the OTC State commitments to extend further.

EPA believes this approach is also fair to the manufacturers. It gives them the maximum stability (both in terms of state LEV programs and nationwide tailpipe standards) that they could have hoped to have achieved under the MOU. Admittedly, the manufacturers' commitment to National LEV may last longer than the OTC States' commitment (it could also end earlier), but only if the National LEV standards remain effective longer than currently anticipated. Manufacturers thus would get more stability of nationwide tailpipe standards than they had bargained for, which does not provide justification for requiring states to extend their commitments beyond MY2005.

B. Timing of OTC State Commitments, Manufacturer Opt-Ins, and EPA Finding National LEV in Effect

EPA is proposing a process for the OTC States and the manufacturers to opt into the National LEV program and for EPA to find the program in effect that would allow the program to go into effect without requiring the parties to sign an MOU. As discussed in the notice of proposed rulemaking (NPRM) (60 FR 52742), to implement the program promptly upon completion of the National LEV rulemaking, there needs to be a deadline for EPA to assess whether the National LEV program is in effect. Also, EPA must establish deadlines for the OTC States and manufacturers to opt into National LEV in advance of the deadline for EPA's determination.

EPA is proposing the following timing for the OTC States and manufacturers to opt into National LEV, and for EPA to find the program in effect. Because National LEV needs to be in place as soon as possible to ensure that it is available for MY1999, the following deadlines are based on the date of signature of the supplemental final rule.[8] Seventy-five days from signature of the final supplemental rule, EPA would be required to determine whether the National LEV program was in effect (see section V.C.3 below for the criteria for finding National LEV in effect). This finding would be based on the OTC States' initial opt-in packages from their Governors and state environmental commissioners or secretaries (discussed below in section V.C) that were submitted no later than 45 days from the date of signature of the final supplemental rule and on the manufacturers' opt-ins submitted no later than 60 days from signature of the final supplemental rule. If EPA were to find National LEV in effect, all parties would be bound by their commitments to the program. While any party that missed its deadline for opt-in would not be barred from submitting a late opt-in, EPA would only be required to consider timely opt-ins in determining whether National LEV is in effect. Moreover, given the very short timeframe for the opt-in process and the fact that some parties may be reluctant to opt in before they know whether others will do so, a late opt-in is likely to jeopardize the start-up of the program.

EPA recognizes that the proposed deadlines are quite tight, and will require swift action by the parties. Given both the manufacturers' production schedules and the earliest plausible signature date for the supplemental final rule, any extension of the proposed schedule may jeopardize the MY1999 start date and, thus, the entire program. Nevertheless, EPA requests comment on the proposed schedule and the viable start date for the program.

EPA is proposing that, after the initial opt-ins and an EPA finding that the program is in effect, the OTC States would generally have one year from the date of the in-effect finding to submit the final portion of their opt-ins, which would be a SIP revision committing the state to the National LEV program and allowing manufacturers to comply with National LEV as an alternative to a state Section 177 Program, as described in more detail in section V.C.4 below. EPA is aware that a few states, specifically Delaware, New Hampshire, Virginia and the District of Columbia, have particular circumstances related to their state rulemaking processes that make a one year deadline unrealistic. Thus, EPA proposes that for these states, the deadlines would be eighteen months from the date of the in-effect finding. The consequence of a state missing its deadline for submission of its SIP revision committing to National LEV would be that the manufacturers would have the opportunity to opt out of the program. See section VI below for further discussion of offramps.

C. OTC State Commitments, Manufacturer Opt-Ins, and EPA's Finding That National LEV is in Effect

This section describes EPA's proposed process for the OTC States and the manufacturers to commit to the National LEV program and for EPA to find the program in effect. This includes how the OTC States would commit to the program, the elements of their commitments, the permissible conditions on OTC State and manufacturer opt-ins, and the criteria that EPA would use to find the program in effect.

1. Initial Opt-In by OTC States

EPA proposes that the OTC States would commit to National LEV in two steps, the first of which would be an opt-in package from each state's Governor and environmental commissioner, indicating the OTC State's intent to opt into National LEV. The second step would be a SIP revision incorporating the OTC State's commitment to National LEV in state regulations, which EPA would approve into the federally enforceable SIP.

EPA proposes that, within 45 days of signature of the supplemental final rule, the Governor (or Mayor, in the District of Columbia) would submit to EPA an executive order (or, for some states, a letter) committing the OTC State to the National LEV program. The executive order (or letter) would contain three main elements. First, it would state that its purpose is to opt the state into National LEV. Second, it would state that the Governor is forwarding a letter signed by the head of the state environmental agency (or other appropriate agency or department), which specifies the details of the state's commitment to the National LEV program. Third, it would state that the Governor has directed the head of the state environmental agency to take the necessary steps to adopt regulations and submit a SIP revision committing the state to National LEV in accordance with the requirements of the National LEV regulations. In addition, OTC States with existing ZEV mandates[9] may add language confirming that the opt-in will not affect the state's requirements pertaining to ZEVs.

The Governor's executive order (or letter) would enclose a letter signed by the state environmental commissioner or secretary of the appropriate state department (''commissioner's letter''), which would specify the details of the state's commitment to National LEV. Alternatively, if an OTC State has proposed regulations meeting the requirements for a SIP revision specified below, the state may substitute the proposed regulations for the portions of the commissioner's letter for which they are duplicative. In that case, the Governor would send to EPA the Governor's executive order (or letter), the proposed regulations, and a letter from the commissioner, which would contain the elements specified below that were not included in the proposed regulations.

EPA is proposing that the commissioner's letter would include the following elements. First, it would indicate that National LEV would achieve reductions of VOC and NO_x emissions equivalent to or greater than the reductions that would be achieved through state adopted Section 177 Programs in the OTR. Second, it would

[8] EPA would provide directly affected parties actual notice and make copies of the final rule available within a week of signature.

[9] ZEV mandates are those state regulations or other laws that impose (or purport to impose) obligations on auto manufacturers to produce or sell a certain number or percentage of ZEVs. EPA is proposing that any OTC State with a ZEV mandate that was adopted prior to the OTC State's opt-in to National LEV would be treated as a state with an existing ZEV mandate. EPA takes comment on whether another cut-off date would be appropriate in place of the date of the state's opt-in, including: September 15, 1996; the signature date of the Final Framework Rule; the signature date of the final supplemental rule; and the date of EPA's finding that National LEV is in effect.

indicate that the state intends National LEV to be the state's new motor vehicle emissions control program. Third, it would state that for the duration of the state's participation in National LEV, the state will accept National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to any state Section 177 Program. A state Section 177 Program is any regulation or other law, except a ZEV mandate, adopted by an OTC State in accordance with section 177 and which is applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these vehicle categories are defined under the California regulations. (This commitment would not restrict states from adopting and implementing requirements under section 177 for heavy-duty trucks and engines and diesel-powered vehicles between 6,001 and 14,000 pounds GVWR.) The letter would further state that the state's participation in National LEV extends until MY2006, except as provided in the National LEV regulations' provisions for the duration of the OTC State commitments, including provisions for state offramps. The offramps would allow the OTC States to exit National LEV if an auto manufacturer decided to exit the program. OTC States without existing ZEV mandate provisions would add a statement that the state accepts National LEV as a compliance alternative to any ZEV mandates. OTC States with existing ZEV mandate provisions would add a statement that their acceptance of National LEV as a compliance alternative for state Section 177 Programs does not include or have any effect on the OTC State's ZEV mandates.

Fourth, the commissioner's letter would include both an explicit recognition that the manufacturers are opting into National LEV in reliance on the OTC States' opt-ins, and a recognition that the commitments in the initial OTC State opt-in package have not yet gone through the state rulemaking process to be incorporated into state regulations, so they do not yet have the force of law; in addition, the letter would recognize that the state's executive branch must comply with any laws passed by the state legislature that might affect the state's commitment. Fifth, the commissioner's letter would include an acknowledgment that, if a manufacturer were to opt out of National LEV pursuant to the opt-out provisions in the National LEV regulations, the transition from the National LEV requirements to any state Section 177 Program or ZEV mandate would be governed by the National LEV regulations. Sixth, similar to the manufacturers' opt-in letters, the commissioner's letter would state that the state supports the legitimacy of the National LEV program and EPA's authority to promulgate the National LEV regulations.

As it stated in the NPRM for National LEV (60 FR 52740), EPA believes that the decision regarding adoption of ZEV mandates by OTC States must be left up to each individual OTC State, to the extent permitted under section 177. The OTC States have indicated that they support certain commitments regarding ZEV mandates by including those provisions in the MOU voted on by the OTC and initialed by the OTC pursuant to the vote. EPA is proposing in the alternative that the OTC States without existing ZEV mandate provisions would either have to include a statement in the commissioner's letter indicating that the state intends to forbear from adopting a ZEV mandate effective before MY2006 or would have to include a statement that the state will forbear from adopting such a provision. The draft MOU initialed by the OTC contains the ''intends to'' language, while the draft MOU initialed by the manufacturers uses the ''will'' language.

EPA is also taking comment on whether those OTC States that have not adopted a Section 177 Program at the time of signature of the supplemental final rule should include in the commissioner's letter a statement that the state intends to or will forbear from adopting a Section 177 Program effective before MY2006. The draft MOU initialed by the manufacturers included a statement that certain OTC States would forbear from adopting such ''backstop'' Section 177 Programs,[10] while the draft MOU initialed by the OTC States did not include any statement regarding adoption of such backstop programs.

Finally, EPA is proposing that the commissioner's letter may include a statement that the state's opt-in to National LEV is conditioned on all of the motor vehicle manufacturers listed in the National LEV regulations opting into National LEV pursuant to the National LEV regulations and on EPA finding National LEV to be in effect. EPA is further proposing that, as with the manufacturers' opt-ins, no conditions other than those specified in the regulations may be placed on any of the state opt-in instruments (the Governor's executive order (or letter), the commissioner's letter, or the SIP revision).

EPA is taking comment on whether the regulations should allow an OTC State to condition its opt-in on signature of an acceptable independent agreement with the manufacturers to promote advanced technology vehicles (ATVs). Although EPA agrees that advancing technology is an important policy goal and EPA believes that the National LEV program could be a part of an agreement that would provide important opportunities to promote ATVs, as proposed, the regulatory portion of the National LEV program does not address ATVs. EPA also recognizes that the manufacturers have indicated their belief that any agreement on ATVs should only be addressed as part of a larger MOU committing to National LEV. Some of the OTC States, however, have indicated a continuing interest in an ATV agreement and the desire to condition their opt-ins on the signature of an ATV agreement. Such an agreement could be comprehensive, as contemplated by the agreement contained in the MOU. Or, it could be a smaller agreement between a particular state or states and a particular manufacturer or manufacturers. EPA believes that if such a condition were allowed, it would have to be met prior to EPA finding that National LEV was in effect. Under the proposed timetable, this would allow manufacturers and states only 30 days to conclude such an agreement after the due date for the OTC States' initial opt-in packages. Even if manufacturers were amenable to some type of an ATV agreement (or agreements with individual states), conditioning an opt-in on an undefined ATV agreement might dissuade manufacturers from opting in. Therefore, EPA believes that the questions of whether there will be any ATV agreements and if so, what they will contain, are best determined between the auto manufacturers and the OTC States prior to the deadline for state opt-ins.

In the proposed regulations, EPA is proposing specific language for each element of the OTC States' opt-ins to be included in the Governor's executive order (or letter), the commissioner's letter, and the SIP revision. EPA is also taking comment on whether it is necessary for EPA to specify language or whether it would be sufficient for the National LEV regulations to identify the elements that must be in the OTC States' opt-in documents without specifying exact language. Although it is somewhat unusual for EPA to identify specific

[10] ''Backstop'' Section 177 Programs are programs that allow National LEV as a compliance alternative to the Section 177 Program requirements.

language for state submissions, EPA believes this may be an appropriate case to do so. Because the OTC States and manufacturers are signing up for a voluntary program and are unlikely to sign an MOU, using specified language would be useful to ensure that they sign up to the same program. Otherwise, the opt-ins might not represent agreement on the terms and conditions of the voluntary National LEV program. In addition, as discussed further below, EPA proposes to find National LEV in effect without providing for additional notice-and-comment on whether the conditions are met for finding National LEV in effect. It is more appropriate to proceed without additional rulemaking if the Agency's in-effect finding is essentially a nondiscretionary action based on clear factual determinations. If EPA must use its discretion to determine whether a state has adequately committed to National LEV, that might require further rulemaking and substantially delay implementation of the program. However, if the OTC States use the language specified in the regulations, which EPA will have determined to be adequate through a notice-and-comment rulemaking, EPA could find National LEV in effect on that basis.

EPA recognizes that some states may need to use language for certain elements of the opt-in that deviates in a few respects from the language proposed today, due to the requirements of different states' individual administrative laws and rulemaking procedures. EPA requests that any OTC States that have concerns about using the proposed language notify EPA to that effect in comments on this proposal. EPA requests that any such comments include alternate suggested language for the specified elements of the opt-in, and that a state make the minimum adjustments to the language necessary to allow the state to opt into National LEV. EPA proposes to provide in the final rule alternate approved specific language for specific states, as necessary to account for individual states' particular needs. Any such language would still need to address each of the opt-in elements and commit the state adequately to the National LEV program. EPA also recognizes that a state may wish to include background information, especially in the Governor's executive order (or letter). This would be permissible under EPA's proposed regulations, providing that the additional information did not add conditions to the state's opt-in.

2. Manufacturer Opt-Ins

EPA is proposing that motor vehicle manufacturers' opt-ins to National LEV would be due within 60 days from signature of the final rule. As provided in the Final Framework Rule, a manufacturer would opt into National LEV by submitting a written notification signed by the Vice President for Environmental Affairs (or a company official of at least equivalent authority who is authorized to bind the company to the National LEV program) that unambiguously and unconditionally states that the manufacturer is opting into the program, subject only to conditions expressly contemplated by the regulations. See 40 CFR 86.1705(c)(2). EPA is proposing that the only permissible conditions in a manufacturer's opt-in notification would be that all of the OTC States opt into National LEV pursuant to the National LEV regulations and that EPA find the program to be in effect. These conditions parallel the proposed permissible conditions described above for the OTC States' opt-ins.

3. EPA Finding That National LEV is in Effect

The OTC States' and the auto manufacturers' opt-ins would become effective upon EPA's receipt of the opt-in notification or, if the opt-in were conditioned, upon the satisfaction of that condition. Under today's proposal, EPA would find National LEV in effect if each OTC State and each listed manufacturer were to submit an opt-in notification that complied with the requirements for opt-ins, and all conditions on any of those opt-ins had been satisfied (or would be satisfied upon EPA finding National LEV in effect). EPA is also taking comment on whether the Agency should be able to find National LEV in effect if each of the listed manufacturers were to submit an opt-in notification that complied with the requirements for opt-ins, each of the opt-in notifications submitted by an OTC State complied with the requirements for opt-ins, and any conditions placed upon any of the opt-ins were satisfied, even if fewer than all OTC States opted into National LEV. EPA believes that National LEV should be a national program—effective in all states but California. This would provide the OTR with emissions reductions greater than what could be achieved without National LEV and would simplify distribution and other aspects of the sale of motor vehicles. Moreover, the manufacturers have stated that they are not willing to opt into National LEV unless each and every OTC State opts into National LEV. However, if the OTC States and auto manufacturers are willing to participate in a National LEV program even if all OTC States do not opt-in, EPA will not stand in the way of National LEV going into effect. Once EPA finds National LEV in effect, the manufacturers would be subject to the National LEV requirements for new motor vehicles for the duration of the program, and the OTC States would be committed to participate in the National LEV program for the duration of their commitments, as discussed above in section V.A.

While the OTC States' SIP revisions are a necessary component of their commitments to National LEV, EPA is proposing to make the finding as to whether National LEV is in effect before the OTC States' SIP revisions are due. Through the executive order (or letter), the Governor of each state will have opted into National LEV and started the process for submission of an approvable SIP revision. Also, as discussed further below, EPA is proposing that an OTC State's failure to submit the SIP revision within the time provided for submission would give manufacturers an opportunity to opt out of the National LEV program. Together, this high level directive for action and the consequences of a failure to conclude the action provide substantial assurance that the OTC States will submit their SIP revisions within the specified time.

EPA would publish the finding that National LEV is in effect in the **Federal Register**, but the Agency would not need to go through additional rulemaking to make this determination. In the Final Framework Rule, EPA stated that further Agency rulemaking to find National LEV in effect would be unnecessary because EPA would establish the criteria for the finding through notice-and-comment rulemaking, and EPA's finding that the criteria are satisfied would be an easily verified objective determination. See 62 FR 31226 (June 6, 1997). As discussed above, to find National LEV in effect, EPA would have to determine that the OTC States and the manufacturers had submitted opt-in notifications that met the requirements specified in the regulations and that any conditions on those opt-ins had been satisfied. EPA established most of the specifics of the manufacturers' opt-in notifications in the Final Framework Rule after taking comment on those issues in the NPRM. In today's SNPRM, EPA is taking comment on additional details of manufacturer opt-in notifications and the specifics of the OTC States' opt-in notifications, which EPA will finalize in the supplemental final rule. Thus, the

public will have had full opportunity to comment on the adequacy of the elements of the manufacturers' and OTC States' opt-ins and the language provided for those opt-ins. As with the manufacturers' opt-ins, determining whether a state has used the specified language without adding any conditions is a simple, objective determination, which would not require further rulemaking. Similarly, if OTC States or manufacturers conditioned their opt-ins on either all manufacturers or all OTC States opting into National LEV, determining whether these conditions were satisfied would be a simple factual inquiry involving no discretion on the part of EPA. Thus, EPA proposes to find that National LEV is in effect without conducting further rulemaking if the Agency determines that it has received opt-in notifications from each OTC State and listed manufacturer that include the specified elements in approved language without qualifications and the Agency determines that all conditions on those opt-ins have been satisfied.

4. SIP Revisions

EPA proposes that within one year of the date of EPA's finding that National LEV is in effect, the OTC States would complete the second phase of their commitments to National LEV by submitting SIP revisions to EPA incorporating their commitments (''National LEV SIP revisions'').[11] EPA proposes that the SIP revisions would contain the following elements incorporated in enforceable state regulations. The first regulatory provision would commit that, for the duration of the state's participation in National LEV, the manufacturers may comply with National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to any state Section 177 Program (which is any regulation or other law, except a ZEV mandate, adopted by an OTC State in accordance with section 177 and which is applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these vehicle categories are defined under the California regulations).[12] This provision would not restrict states from adopting and implementing requirements under section 177 for heavy-duty trucks and engines and diesel-powered vehicles between 6,001 and 14,000 pounds GVWR. The regulations would also commit the state to participate in National LEV until MY2006, except as provided in the National LEV regulatory provisions for the duration of the OTC State commitments, including provisions for state offramps. States that did not have an existing ZEV mandate (see n. 9 above) would additionally provide that manufacturers may comply with National LEV as a compliance alternative to any ZEV mandates for the duration of the state's participation in National LEV. The second element of the state regulations would explicitly acknowledge that, if a manufacturer were to opt out of National LEV pursuant to the opt-out provisions in the National LEV regulations, the transition from the National LEV requirements to any state Section 177 Program or ZEV mandate (for states without existing ZEV mandates) would be governed by the National LEV regulations, thereby incorporating these National LEV provisions by reference into state law.

The SIP submission to EPA would include state regulations containing the elements discussed above, and a transmittal letter or similar document from the state commissioner forwarding those regulations. EPA proposes that three additional elements of the SIP commitment may be included either in the transmittal letter or the state regulations. First, the state would commit to support National LEV as an acceptable alternative to state Section 177 Programs. Second, the state would recognize that its commitment to National LEV is necessary to ensure that National LEV remain in effect. Third, the state would state that it is submitting the SIP revision to EPA in accordance with the National LEV regulations.

EPA is further proposing that the provisions of the OTC States' commitments relating to ZEV mandates should also be included in the SIP revision. EPA is proposing in the alternative that in the transmittal letter portion of the SIP submission to EPA, each OTC State without an existing ZEV mandate (see n. 9 above) would have to state either that, for the duration of the state's participation in National LEV, the state intends to forbear from adopting any ZEV mandate provisions effective before MY2006, or the state will forbear from adopting such provisions. EPA is taking comment on whether this commitment instead should be incorporated in the state's regulations.

Finally, EPA is also taking comment on whether those OTC States that have not adopted a Section 177 Program at the time of signature of the supplemental final rule should include in the transmittal letter for the SIP revision or in the state regulations a statement that the state intends to or will forbear from adopting a Section 177 Program effective before MY2006. As noted above, the draft MOU initialed by the manufacturers included a statement that certain OTC States would forbear from adopting such backstop Section 177 Programs, while the draft MOU initialed by the OTC States did not include any comparable statement.

As with the finding that National LEV is in effect, EPA is proposing that the Agency could approve SIP revisions committing to the National LEV program without further rulemaking, as long as the revisions include the language specified in the regulations without adding conditions and meet the CAA requirements for approvable SIP submissions. In this notice, EPA is providing full opportunity for public comment on the language that the states would use in their SIP revisions. Thus, in reviewing a SIP submittal, EPA would only have to determine whether the submittal included the specified language without additional conditions, and whether it met the statutory criteria for approvable SIP submissions, as laid out in sections 110(a)(2) and 110(l) of the CAA. Section 110(a)(2), in relevant part, specifies that the state must have provided public notice and a hearing on the SIP provisions and the submission must provide necessary assurances that the state will have adequate personnel, funding and authority under state law to carry out the provisions. Section 110(l) (discussed in more detail below) provides that SIP revisions must not interfere with attainment or any other applicable requirement.

In this case, these requirements for EPA's approval are easily verified objective criteria. They would leave EPA little discretion in deciding whether to approve the SIP revision, and consequently would remove any benefits to be derived from conducting notice-and-comment rulemaking on each approval. Determining whether the language of the SIP submittal tracks the language provided in the final regulations and whether the state has substantively qualified or conditioned that language through modifications or additions is a straightforward,

[11] See section V.B above for discussion of the proposed extended deadline for a few specified states.

[12] OTC States that had Section 177 Programs at the time of opt-in would need to modify their existing regulations in accordance with this provision. EPA is also taking comment on whether by some earlier date (perhaps June 1, 1998), OTC States with Section 177 Programs at the time of opt-in would have to take whatever actions would be necessary to ensure that manufacturers complying with National LEV in MY1999 would not have to comply with the state Section 177 Program for MY1999.

essentially ministerial task. This is also true for assessing whether the state has provided notice and a public hearing on the SIP submission. Because National LEV is a federal program, the state needs no personnel or funding to carry it out, so there is nothing related to the requirement for adequate personnel and funding for EPA to evaluate. For a state with existing regulations requiring compliance with a state Section 177 Program, EPA would merely have to determine whether the state had modified its regulations to include the language in the National LEV regulations to accept National LEV as a compliance alternative for the specified duration of the state commitment, as well as the additional provisions specified above. Again, this is a very simple, objective assessment, requiring no exercise of discretion. Finally, EPA has determined that National LEV would provide reductions in the OTR equivalent to or greater than OTC State Section 177 Programs in the OTR (see section IV), so that a state commitment to National LEV would not interfere with attainment or any other Act requirement. Because the satisfaction of the criteria for approval of the state SIP revisions is so clear as to be virtually self-executing, EPA believes that conducting further notice-and-comment rulemaking on whether the criteria were satisfied for each individual SIP revision would produce additional delay while serving no purpose.

Incorporating the OTC States' commitments to National LEV in state regulations approved into the SIPs will substantially enhance the stability of the National LEV program and support giving states credit for SIP purposes for emissions reductions from National LEV. A SIP revision would clearly indicate a state's commitment to National LEV and would reiterate the state executive branch's support for the National LEV program. More importantly, an approved SIP revision is federal law and hence has binding legal effect. Violation of a commitment to National LEV contained in a SIP is enforceable as a violation of applicable federal law.

The SIP revision would provide that the state commits to accept National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative to a state program under section 177 for a specified time period. If a state adopted new state law or regulations that violated this commitment in the SIP (e.g., by requiring compliance only with a state Section 177 Program), this new state law would not be valid prior to EPA action on the SIP revision incorporating the new law. Prior to such action, the new state law would be precluded by the federal law with which it conflicted (i.e., the SIP revision EPA had approved). Moreover, pursuant to section 304(a)(1) and (f), manufacturers could bring suit against the state to enforce the initial SIP commitment in court. To revise the SIP, the state would have to submit a new SIP revision and EPA would have to approve the new revision through notice and comment rulemaking. Moreover, if EPA disapproved the newly submitted SIP revision, then the new state law would continue to violate the approved SIP revision containing the state commitment to National LEV, and manufacturers could continue to enforce the initial SIP commitment in court.

EPA would be obligated under section 110(l) of the CAA to disapprove a SIP revision that violated a state's commitment to allow National LEV as a compliance alternative if EPA were to find that the SIP revision would interfere with other states' ability to attain or maintain the national ambient air quality standards (NAAQS). Specifically, section 110(l) provides that EPA must disapprove a plan revision if it ''interfere[s] with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act.'' By the terms of its rulemaking, National LEV comes into and stays in effect only if all relevant states commit to allow it as a compliance alternative. If National LEV comes into effect, a number of OTC States, as well as states outside the OTR, are likely to rely on National LEV as a means of attaining and maintaining the ozone NAAQS. These states are likely to forego adoption of other control measures because they will count on reductions from National LEV to meet their attainment and maintenance obligations. In this manner, other states will be relying on each of the OTC States' commitments to National LEV. An OTC State breaking its commitment to allow National LEV as a compliance alternative could lead to the dissolution of the National LEV program, which in turn would likely deprive other states of the emission reductions from National LEV, and could thereby interfere with other states' ability to attain. As discussed above, EPA is proposing that in the SIP revisions committing to National LEV, each OTC State would explicitly recognize that the state's commitment to National LEV is necessary to ensure that the program remain in effect.

VI. Incentives for Parties To Keep Commitments to Program

Once it comes into effect, National LEV is designed to be a stable program that will remain in effect until replaced by mandatory federal tailpipe standards of at least equivalent stringency. Manufacturers have the option, but not the requirement, to participate in National LEV. Manufacturers have indicated a willingness to opt into the program, but only if the EPA and the OTC States make certain commitments. To give the manufacturers both assurance that the commitments will be kept and recourse if they are not, EPA is proposing that the program include a few specified conditions (''offramps'') that would allow manufacturers to opt out of National LEV if EPA or the OTC States did not keep their commitments. In addition, the OTC States also need assurance that National LEV will continue to provide the benefits they anticipated when they opted into the program, both in terms of the number of manufacturers covered by the program and the level of emissions reductions that the program was designed to achieve. Thus, EPA is proposing that National LEV would also include limited offramps for the OTC States to protect against changes in anticipated emission benefits or the number of covered manufacturers. Both the manufacturers' and the OTC States' proposed offramps are structured to maximize all parties' incentives to maintain the agreed-upon program provisions and thereby to maximize the stability of National LEV over its intended duration.

In the unlikely event that any of the offramps were triggered and manufacturers or states opted out, EPA's proposed regulations set forth which requirements would apply, the timing of such requirements, the states in which they would apply, and the manufacturers that would have to comply with them. The main purpose of these provisions is to enhance the stability of the program by minimizing the incentives for EPA or the OTC States to act in a manner that would trigger an offramp. Additionally, EPA has structured the offramp provisions such that no single event automatically would end the National LEV program. EPA will continue to make National LEV available as long as one or more manufacturers and one or more OTC States wish to remain in the program. EPA recognizes, of course, that if a significant number of OTC States or manufacturers were to opt out of National LEV, after a certain point it is unlikely that the remaining parties

would choose to continue the program. However, the issue is highly unlikely to arise and if it did, it is not clear what would be the critical mass of opt-outs sufficient to end the program. Rather than deciding now how many OTC State and auto manufacturer opt outs would be significant enough to end National LEV, EPA believes it is both more appropriate and more efficient to leave that decision to the OTC States and manufacturers to decide, in the unlikely event that an offramp is triggered and significant opt-outs occur.

In the NPRM, EPA proposed that manufacturers' right to opt out of the National LEV program would be limited to two conditions. These offramps were: (1) EPA modification of a Stable Standard, except as specifically provided, and (2) an OTC State's failure to meet or keep its commitment regarding adoption or retention of a state motor vehicle program under section 177. The Final Framework Rule addressed the first offramp, which would allow manufacturers to opt out of National LEV if EPA modified a Stable Standard except as provided for under the National LEV regulations, but did not address the second offramp. This second offramp is addressed here. EPA also is proposing to add a third type of offramp related to auto manufacturers' concerns regarding the effects of using federal fuel (instead of California fuel) on emissions control systems. This is discussed in section VI.C below. In addition, EPA is proposing a fourth type of offramp based on an OTC State or another manufacturer legitimately opting out of National LEV.

A. Offramp for Manufacturers for OTC State Violation of Commitment

Under today's proposal, there are several ways in which an OTC State might break its commitment and thereby allow manufacturers to opt out of National LEV. These are: (1) Final action in violation of the commitment to continue to allow National LEV as a compliance alternative to a Section 177 Program or to a ZEV mandate (in those OTC States without existing ZEV mandates); (2) failure to submit a National LEV SIP revision within the timeframe set forth in the National LEV regulations; and (3) submission of an inadequate National LEV SIP revision.[13] In addition, EPA is taking comment on whether manufacturers should also be able to opt out of National LEV if an OTC State without an existing ZEV mandate adopted a ZEV mandate (even if it accepted National LEV as a compliance alternative for that requirement) and that state had either stated its intent or committed not to adopt such a mandate.[14] The discussion below addresses each of these proposed possible types of OTC State violations individually. EPA does not believe that any of these scenarios are likely to arise under the National LEV program. Nevertheless, spelling out in the regulations the consequences under each of these scenarios will provide the parties certainty regarding the worst-case outcomes, and more importantly, allows EPA to structure the consequences so as to minimize the likelihood that any of these scenarios will occur.

1. OTC State No Longer Accepts National LEV as a Compliance Alternative

The most significant way in which an OTC State could violate its commitment to National LEV would be to attempt to have a Section 177 Program that was in effect and that did not allow National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative[15] through MY2005.[16] This could happen if an OTC State accepted National LEV as a compliance alternative to a state Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) and then took final action purportedly removing those provisions from its regulations, leaving only the state Section 177 Program or ZEV mandate requirements in place. It would also happen if an OTC State took final action purportedly adopting a Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) without providing for National LEV as a compliance alternative.[17] This violation of the OTC State's commitment to National LEV attempts to directly impose a compliance burden on the manufacturers and would abandon the most fundamental element of the agreement underlying the voluntary National LEV program.

The consequences of such a violation, as proposed below, take into account the seriousness of the breach of the commitment, even though the violation would not necessarily burden the manufacturers. Once a state had adequately committed to National LEV through an approved SIP revision, even if the state were to change its regulations to disallow compliance with National LEV, the requirement would not be enforceable until EPA approved a further SIP revision incorporating the change, as discussed above in section V.C.4. Yet although the violation might not actually impose any burden on the manufacturers because it is not enforceable, manufacturers should not be bound to comply with the National LEV requirements in the violating state and should not be bound to continue in the National LEV program, as even an unenforceable Section 177 Program would create risks and uncertainties for manufacturers. Manufacturers would be at risk of having to defend against a state enforcement action. The question of whether, under any circumstances, EPA could approve a proposed state SIP revision deleting National LEV as a compliance alternative—if only by virtue of the lack of precedence for this issue—would create further uncertainty for manufacturers.

EPA is proposing that manufacturers would be able to opt out at any time after an OTC State takes final action that would require manufacturers to comply with a Section 177 Program or a ZEV mandate (in an OTC State without an existing ZEV mandate) prior to MY2006 without allowing them to comply with National LEV or mandatory federal standards of at least equivalent stringency as an alternative, even if the effective date of the state requirement would be some time in the future. The final state action would be the action promulgating the state law or regulations at issue, not the act of defending such law or regulations in litigation. Thus, a self-effectuating state law purporting to impose a Section 177 Program without including National LEV as a compliance alternative would

[13] In addition, as discussed in the following section, EPA is proposing that manufacturers may opt out if an OTC State takes a legitimate offramp.

[14] If, as discussed at n. 12 above, EPA were to set a separate date by which OTC States with Section 177 Programs had to take action to ensure that manufacturers complying with National LEV would not have to comply with the state program requirements, failure to meet such a deadline would also trigger an offramp. EPA is taking comment on what the consequences should be if such an offramp were triggered.

[15] Throughout this preamble, EPA often uses ''National LEV as a compliance alternative'' as shorthand for ''National LEV or mandatory federal standards of at least equivalent stringency as a compliance alternative.''

[16] An OTC State with a Section 177 Program that did not allow National LEV as a compliance alternative as of MY2006 or later would not be in violation of its commitment under National LEV.

[17] In addition, an OTC State with a Section 177 Program in its regulations at the time of opt-in that does not already permit manufacturers to comply with National LEV as a compliance alternative might fail to modify those existing regulations within the time-frame provided, which would be the same as the deadline for submission of the state's SIP revision. The consequences of this type of violation would differ slightly from the consequences of other types of violations that attempted to have a Section 177 Program without allowing National LEV as a compliance alternative, as noted below in n.18.

be final state action, as would final state regulations purporting to impose such a program. A state law directing the relevant state agency to change its regulations to remove National LEV as a compliance alternative would not be a final state action, but the regulations promulgated in accordance with that directive would be final state action.

EPA is proposing that, if an OTC State were to violate its commitment by purportedly disallowing National LEV as a compliance alternative, there would be both automatic consequences in the violating state and an opportunity for manufacturers to opt out of National LEV.[18] To determine the consequences in the violating state, there are two significant issues. The first issue is what are the compliance obligations of the manufacturers in the violating state. The second issue is when would the state Section 177 Program or ZEV mandate requirements apply to manufacturers. Outside of the violating state, manufacturers would continue to be subject to the National LEV requirements unless they opted out of the National LEV program.

Until the violating state's Section 177 Program or ZEV mandate requirements apply, the manufacturers' compliance obligations in that state would be governed by the terms of the National LEV regulations. EPA is proposing that, in a state that has violated its commitment by attempting to have a Section 177 Program or ZEV mandate without allowing National LEV as a compliance alternative, beginning with the next model year,[19] National LEV regulations would allow manufacturers to sell vehicles complying with Tier 1 tailpipe standards in that state and those vehicles would not be counted in determining whether the NLEV fleet average NMOG standard was met. Because model years generally run somewhat ahead of the calendar years with the same numbers, generally this will result in a near-term or immediate change in the manufacturers' compliance obligations. Until the violating state's Section 177 Program requirements applied (which might not be until MY2006), the manufacturers would only have to meet the federal Tier 1 tailpipe standards for vehicles sold in the violating state, and those vehicles would not be used to calculate the manufacturers' fleet NMOG averages.

The earliest date on which the violating state's Section 177 Program or ZEV mandate would apply would be governed by the lead time requirements in section 177 and EPA's regulations on model year at 40 CFR part 85 subpart X and in the National LEV regulations. This date would apply only for any auto manufacturer that opted out of National LEV as a result of the violating state's action (provided that it is later than the effective date of the opt-out), for any auto manufacturer that decided to comply with the violating state's requirements even though it otherwise chose to stay in National LEV, and for all manufacturers if EPA approved the violating state's program into the SIP. (As discussed below, EPA believes the violating state's refusal to allow National LEV as a compliance alternative would not otherwise be effective until MY2006. Thus, if none of these situations occurred, National LEV regulations would allow manufacturers to sell in the violating state vehicles that meet Tier 1 tailpipe standards and to exclude those vehicles from the NMOG fleet average calculation until MY2006.)

After National LEV is in effect, a change to a state regulation that deletes National LEV as a compliance alternative attempts to change the manufacturers' obligations. In that circumstance, as discussed in section VI.D below, EPA interprets section 177 to require two years of lead time from the date that the state takes final action changing its regulations (or other law) deleting National LEV as a compliance alternative regardless of when the state adopted its previous Section 177 Program. Thus, pursuant to the model year regulations at 40 CFR part 85 subpart X and those proposed here, the earliest the state Section 177 Program or ZEV mandate requirements could apply would be to engine families for which production begins after the date two calendar years from the date of the final state action. For example, if the violating state promulgated regulations purportedly removing National LEV as a compliance alternative on June 1, 2000, the earliest the state Section 177 Program or ZEV mandate requirements could apply would be to engine families that began production on or after June 1, 2002, which likely would apply to some, but not all, MY2003 vehicles. EPA is also taking comment on whether there is a way to ensure that manufacturers have at least four, rather than two, years of lead time from the date that the state takes final action changing its regulations deleting National LEV as a compliance alternative, and what the legal basis would be for such an approach.

The combined effect of the National LEV regulations allowing manufacturers to comply with Tier 1 tailpipe standards in the violating state and the requirement for two years lead time before the state Section 177 Program or ZEV mandate requirements could apply means that, if an OTC State were to violate its commitment by not allowing National LEV as a compliance alternative, manufacturers would be subject to only Tier 1 tailpipe standards (and not the NLEV NMOG average) in that state for at least two years. As a consequence, the violating state could not claim SIP credits for control of emissions from vehicles meeting anything more stringent than Tier 1 tailpipe standards during that period. EPA believes that this would provide a powerful incentive for the OTC States to uphold their commitments to accept National LEV as a compliance alternative for the specified duration.

EPA recognizes that it may take manufacturers some time to take advantage of the less stringent Tier 1 tailpipe standards, and that, consequently, the hardware of the vehicles supplied to the violating state may not change dramatically in the short-term. However, manufacturers would be able to revise vehicle compliance levels rapidly to provide that, for warranty and recall purposes, the vehicles are only complying with Tier 1 tailpipe standards. This means that over the life of those vehicles they would only be required to produce emissions below the 50,000 mile and 100,000 mile Tier 1 standards and enforcement action could not be taken to require those vehicles to meet any more stringent standards.[20] As long as manufacturers are not required to sell vehicles meeting standards more stringent than Tier 1 in the violating state, it would not be appropriate for EPA to approve SIP credits for any emissions reductions beyond the levels provided by Tier 1 tailpipe standards. Those vehicles would not be included in calculating the manufacturers'

[18] In an OTC State that had a Section 177 Program in its regulations at the time of opt-in and that had never accepted National LEV as a compliance alternative to the Section 177 Program requirements, the consequences in the violating state discussed in this section would not apply, given EPA's interpretation of section 177. See section VI.D. However, the provisions for a manufacturer's offramp would be the same for a state that failed to modify existing regulations to accept National LEV as a compliance alternative as for any other state action not allowing National LEV as a compliance alternative.

[19] The ''next model year'' would be the model year named for the calendar year following the calendar year in which the OTC State took final state action violating its commitment. For example, if an OTC State violated its commitment by taking final state action in calendar year 1999, the next model year would be MY2000.

[20] See section VIII.C for discussion of how EPA's vehicle certification process would allow a manufacturer to provide vehicles meeting Tier 1 standards in a violating state.

compliance with the National LEV fleet average NMOG standards and the SIP would not provide in any way for vehicles sold in that state to meet emission standards more stringent than Tier 1 levels. EPA is proposing to include in the supplemental final regulations provisions for this approach to SIP credits for vehicles sold in a violating state.

In addition to the relaxed emissions standards that would apply to vehicles sold in the violating state, the other incentive for OTC States not to violate their commitments is that manufacturers would also be able to opt out of National LEV if an OTC State violated its commitment to the program by not allowing National LEV as a compliance alternative. EPA is proposing that there would be no time limit for manufacturers to exercise their right to opt out as long as the state was in violation of its commitment. After a manufacturer opted out, there also would be no opportunity for the state to cure the violation by changing the state law or regulations to accept National LEV as a compliance alternative and thereby negate an opt-out that a manufacturer had already submitted, regardless of whether that opt-out had become effective already. However, once a violating state took final action to cure the violation, manufacturers that had not already opted out could not opt out based on the violation that the state had cured.

The Final Framework Rule gives EPA an opportunity to make a finding as to the validity of an opt-out based on a change to a Stable Standard. See 62 FR 31202–07. This both provides a safe harbor for a manufacturer that relies on an EPA determination of validity, and provides for rapid resolution in the United States Court of Appeals for the District of Columbia if the validity is disputed, thereby avoiding protracted litigation in federal district court. In contrast, EPA does not believe such a process is necessary here. The validity of an opt-out based on a state disallowing National LEV as a compliance alternative should be a straight-forward factual determination. Consequently, EPA believes there is very little benefit to be gained by providing for an EPA determination of the validity of such an opt-out, and EPA is not proposing such a provision.

EPA is proposing that a manufacturer that opts out of National LEV based on a state violation of its commitment to National LEV must continue to comply with National LEV until the opt-out becomes effective (although Tier 1 tailpipe standards will apply in the violating state, as proposed above). EPA is proposing that each manufacturer's opt-out notification would specify the effective date of the opt-out, which in no event could be any earlier than the next model year (i.e., the model year named for the calendar year following the calendar year in which the manufacturer opted out).[21] After the effective date of its opt-out, a manufacturer would have to comply with any non-violating state's Section 177 Program (except for ZEV mandates) provided that at least two-years lead time (as provided in section 177) had passed since the adoption of the state's Section 177 Program. Other than those ZEV mandates that would be unaffected by the National LEV program (i.e., existing ZEV mandates), if a manufacturer opts out, it would not be subject to any other ZEV mandates until two years of lead time had passed, which would run from the date the manufacturer opts out of National LEV and be measured according to the section 177 implementing regulations. After the effective date of a manufacturer's opt-out, in a non-violating state without a Section 177 Program, the manufacturer must meet all applicable federal standards that would apply in the absence of National LEV.

The following summarizes EPA's proposal for the tailpipe standards that would apply if an OTC State violated its commitment by not allowing National LEV as a compliance alternative. For vehicles sold in the violating state, all manufacturers would be allowed to sell vehicles meeting Tier 1 standards and to exclude those vehicles from the NMOG fleet average beginning in the next model year after the date of the state violation for at least the two-year lead time set forth in section 177 and the implementing regulations; then manufacturers would become subject to the state Section 177 Program only if the manufacturer opted out of National LEV and its opt-out had become effective, if the manufacturer decided to comply with the violating state's new Section 177 Program while remaining in National LEV, or if EPA approved the state's requirements into the SIP. If a manufacturer opted out, before the opt-out became effective, the manufacturer would continue to be subject to all National LEV requirements for vehicles sold outside of the violating state. Once a manufacturer's opt-out had become effective, for vehicles sold outside of the violating state, the manufacturer would have to comply with any backstop state Section 177 Programs (except ZEV mandates) that a state had adopted at least two years before the effective date of opt-out and, in other states, would have to comply with all applicable federal standards that would apply in the absence of National LEV. Manufacturers would not have to comply with any ZEV mandates (except those that were unaffected by National LEV) until after two years of lead time had passed as set forth in section 177, which would start to run from the date EPA received the manufacturer's opt-out. Manufacturers that did not opt out would continue to be subject to all National LEV requirements for vehicles sold outside of the violating state and, in the violating state, would be allowed, under the National LEV regulations, to sell vehicles meeting Tier 1 tailpipe standards and to exclude those vehicles from the NMOG fleet average. To the extent these proposed regulations would provide a manufacturer with less than the two-years lead time set forth in section 177, the manufacturer would waive that protection by opting into National LEV and then setting an effective date in its opt-out notification that was earlier than the two-years leadtime would provide.

2. OTC State Fails to Submit SIP Revision Committing to National LEV

The second way in which an OTC State could violate its commitment to National LEV would be to fail to submit a SIP revision to EPA containing the state's regulatory commitment to the program. The consequences of this violation differ slightly from a situation where a state does submit such a SIP revision, receives EPA approval for it, but then violates the commitment by attempting to remove National LEV as a compliance alternative. Failure to submit a SIP revision would not necessarily indicate that the state was attempting to impose a compliance obligation on the manufacturers contrary to the terms of the fundamental agreement underlying the voluntary National LEV program. Consequently, if manufacturers did not choose to opt out of National LEV, they would continue to be subject to all the National LEV requirements for vehicles sold both within and outside of the violating state, and the National LEV program would continue. However, the portion of the OTC State commitments contained in the SIP revisions is critical to the long-term enforceability of the state commitments, so EPA believes it is

[21] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after that state's opt-out became effective. As discussed below in section VI.B, an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

important to allow the manufacturers to opt out of National LEV if a state fails to submit a SIP revision. This will maximize the incentives for OTC States to submit their National LEV SIP revisions and to provide manufacturers recourse in the event of a state failure to do so.

As under the previous scenario, EPA is proposing that there would be no time limit for manufacturers to exercise their right to opt out of National LEV if an OTC State had missed the deadline for its National LEV SIP revision and had not yet submitted such a SIP revision. Once the state submitted its SIP revision, even if after the deadline, manufacturers would no longer have the opportunity to decide to opt out of National LEV. Unlike the previous scenario, EPA is proposing that a state that had missed the deadline for its SIP submission would have a limited opportunity to cure the violation. For the first six months from the deadline for the SIP submission, manufacturers would only be able to opt out conditioned on the state not submitting a SIP revision within six months of the initial deadline. If the state submitted the revision within that six-month grace period, any opt-outs based on that violation would be invalidated and would not come into effect. EPA believes this limited opportunity to cure is appropriate here, given the very tight timeframes provided for the OTC States to submit their SIP revisions and the fact that failure to submit this SIP revision would not pose the risk of any immediate change in the manufacturers' compliance obligations. After the six-month grace period, the state's submission of a SIP revision would not negate an opt-out that a manufacturer had already submitted to EPA, even if the manufacturer's opt-out had not yet become effective. However, no manufacturer would be able to opt out after the state submitted the SIP revision no matter how late. As under the previous scenario, whether or not a state has failed to submit a SIP revision by a given date and thereby provided a basis for an opt-out is a very clear cut issue. Consequently, EPA is not proposing to provide for an EPA determination of the validity of an opt-out based on this violation.

Again consistent with the previous scenario, EPA is proposing that, if a manufacturer opts out it may set the effective date of its opt-out as early as the next model year after the date of the opt-out or any model year thereafter. [22] If a manufacturer opts out of National LEV, in the violating state, the National LEV regulations would allow the manufacturer to meet Tier 1 tailpipe standards and would not require those vehicles to be included in the NMOG fleet average calculations. These special provisions for vehicles sold in the violating state would start with the next model year after the manufacturer opts out (e.g., MY2000 for a manufacturer that opts out in calendar year 1999) and continue until the effective date set in the opt-out notice. As under the scenario above, the violating state would not receive SIP credits for emissions reductions from vehicles meeting anything more stringent than the Tier 1 tailpipe standards while those standards apply. Once the manufacturer's opt-out had become effective, the manufacturer would be subject to a Section 177 Program in the violating state if the two-year lead time requirement of section 177 had been met. EPA is taking comment on whether, regardless of the effective date of an opt-out, National LEV regulations should allow manufacturers to sell vehicles that meet Tier 1 tailpipe standards for four years in the violating state.

If a manufacturer opted out of National LEV, in non-violating states it would continue to meet all National LEV requirements until the effective date of its opt out. For vehicles sold in the non-violating states, once the opt-out became effective.

3. OTC State Submits Inadequate SIP Revision Committing to National LEV

A third way in which an OTC State could violate its commitment to National LEV would be to submit a SIP revision that did not adequately commit the state to the National LEV program. Evaluation and approval of SIP revisions is an EPA responsibility, as delegated by Congress under section 110(k) of the Act. Thus, EPA believes that it is appropriate for the Agency to evaluate the adequacy of the submission before a manufacturer could opt out on the basis of a claimed inadequacy. EPA is proposing that manufacturers would be able to opt out if EPA disapproved a National LEV SIP revision, and either the state failed to submit a corrected SIP revision within one year of EPA's disapproval, or the state submitted a modified SIP revision and EPA subsequently disapproved the revision. Under this scenario, the date of the violation that would allow a manufacturer to opt out of National LEV would be either the state's failure to submit a National LEV SIP revision committing to National LEV within one year of EPA's disapproval of its initial SIP revision, or publication of EPA's second disapproval. EPA also considered and is taking comment on the following alternative approaches for when a manufacturer could opt out based on an inadequate National LEV SIP revision. One alternative would be to allow manufacturers to opt out immediately upon EPA's initial disapproval of a state's National LEV SIP revision. Another would be to allow manufacturers to opt out if a state's National LEV SIP revision was inadequate and EPA failed to approve it within nine months (or one year) of the deadline for state submission of the SIP revision, whether that failure was through disapproval or inaction. Still another alternative would be upon a determination by the manufacturer that the SIP revision is inadequate, even if EPA has not yet acted on it.

As with the other types of state violations, EPA is proposing no deadline for manufacturers to opt out based on this offramp. Also, there would be no opportunity for the state to cure the violation after a manufacturer had opted out, although manufacturers that had not opted out could no longer do so once the state had cured a violation and EPA had approved the SIP revision committing the state to National LEV. As proposed, the action allowing opt out is very clear, and hence EPA is not proposing to provide for an EPA determination of the validity of an opt-out based on this type of violation.

Again consistent with the previous scenarios, EPA is proposing that if a manufacturer opts out it may set the effective date of its opt-out as early as the next model year or any model year thereafter.[23] EPA is proposing that manufacturers' obligations under National LEV and state Section 177 Programs would be identical to those described if a state failed to submit a SIP revision.

B. OTC State or Manufacturer Legitimately Opts Out of National LEV

Following the general principle that parties should be able to exit National

[22] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became effective. As discussed below in section VI.B an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

[23] If, however, an OTC State took a legitimate offramp as discussed below, a manufacturer could not use a delayed effective date of opt out to continue to comply with National LEV in a state that had opted out after the state opt-out became effective. As discussed below in section VI.B an OTC State legitimately opting out of National LEV is required to provide manufacturers at least two years lead time.

LEV if there is a significant change in the assumptions that underlay their decision to opt in initially, a manufacturer also could opt out if an OTC State or another manufacturer were to opt out of National LEV legitimately.[24] This offramp could be used within 30 days of EPA's receipt of an OTC State or a manufacturer opt-out. The manufacturer could set an effective date for its opt-out beginning the next model year after the date of the manufacturer's opt-out, or any model year thereafter. EPA would not determine the validity of opt-out under this offramp unless EPA is to determine the validity of the initial opt-out. EPA is proposing that manufacturers' obligations under National LEV and state Section 177 Programs would be identical to those described if a state failed to submit a SIP revision, except that no state would be a violating state.

C. Offramp for Manufacturers for EPA Failure to Consider In-Use Fuel Issues

EPA is proposing an additional offramp for manufacturers related to the potential effects of fuel sulfur levels on emissions performance of National LEV vehicles. EPA is proposing that manufacturers could opt out of National LEV if EPA failed to consider certain vehicle modifications, on-board diagnostic control systems, or preconditioning of vehicles when requested to do so by a manufacturer as a result of an alleged effect of high-sulfur fuel levels. Manufacturers are concerned that the sulfur levels of in-use fuels supplied outside of California may affect the on-board diagnostic (OBD) systems and tailpipe emissions of National LEV vehicles. However, EPA does not believe that at this point it has sufficient data on these potential effects to identify any problems conclusively and to fully resolve any such problems in the context of the National LEV regulations. EPA recognizes that this remains an important issue for the manufacturers, however, and is proposing to build into National LEV means to allow problems related to fuel sulfur effects on emissions performance of National LEV vehicles to be addressed within the context of National LEV as more information becomes available. These problems would be addressed on a case-by-case basis. EPA would act based on a manufacturer's request, supported by data, that a specific engine family or families are adversely affected by sulfur in a manner covered by one of the conditions incorporated into the National LEV regulations and that appropriate relief is warranted for such family or families.

EPA recognizes that sulfur effects on motor vehicles is also an issue outside of the National LEV context and is being addressed in numerous other actions. These include testing being done to support EPA's Tier 2 Study and the Ozone Transport Assessment Group's recommendation to EPA to explore reducing fuel sulfur levels. EPA is working with the various stakeholders in developing data to quantify any sulfur effects on current and future technology vehicles. EPA has said that in appropriate instances, EPA will address sulfur effects on specific mobile source programs. In March, 1997, EPA released a paper entitled ''OBD & Sulfur White Paper: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles.'' This paper summarized the sulfur concerns and the available data, and outlined EPA's approach to resolving OBD/sulfur issues on a case-by-case basis.[25] EPA is pursuing additional investigations into sulfur impacts on OBD and emission control system performance with the cooperation and contribution of other stakeholders. However, as of yet there is little additional data, and while the OBD & Sulfur White Paper will likely be revised in the near future, its suggested case-by-case approach remains EPA's expected approach regarding the OBD/sulfur issue.

Based on their continuing concerns regarding the effects of fuel sulfur levels on OBD systems and vehicle emissions, the auto manufacturers approached EPA in June, 1997 with a proposed resolution for National LEV. Believing that the effects of fuel sulfur were not adequately addressed by EPA in the National LEV program, the manufacturers proposed that National LEV should include an offramp for manufacturers related to in-use fuels issues and that they should be allowed to exit the National LEV program if EPA were to act (or fail to act) in a specified manner to resolve specific sulfur-related issues. The manufacturers outlined six different conditions (set forth below) related to EPA actions (or lack of action) on these issues that they believe should allow the manufacturers to opt out of National LEV. Below, EPA has reproduced each of the conditions for triggering the offramp as stated by the manufacturers, followed by a discussion and EPA's proposal regarding each of the requested offramp conditions.

First, the manufacturers suggested that they be allowed to opt out if ''EPA declines to allow the use of OBD catalyst monitor systems which, if functioning properly on low sulfur gasoline, indicate sulfur-induced passes when exposed to high sulfur gasoline.''

Under current regulations, manufacturers are required to install OBD systems that monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds. These systems also must alert the vehicle operator to the need for repair by illuminating a dashboard malfunction indicator light (MIL) and must store diagnostic information in the vehicle's computer to assist the diagnosis and repair of the problem. Before an OBD system can appear on new vehicles, EPA must certify that the system meets these requirements, and these requirements must continue to be met in actual in-use operation. Proper functioning of OBD systems is evaluated by simulating various malfunctions of the emission control system (e.g., replacing the catalyst or oxygen sensors with ineffective components) and determining whether or not the OBD system ''notices'' the simulated malfunction and responds appropriately.

The offramp condition suggested by the manufacturers reflects their concern that their OBD systems will be designed to pass a certification or recall test properly using the low-sulfur fuel required in California, but that high-sulfur fuel supplied outside of California may affect the OBD system such that it may be unable to detect catalyst degradation at the necessary emission level. In such cases, the MIL could fail to illuminate (a ''sulfur-induced pass''), whereas if the vehicle was operated on low sulfur fuel the MIL would react appropriately. In the unlikely event that EPA concluded that an OBD system should not be certified specifically because of this type of behavior, manufacturers suggest that they be allowed to opt out of the National LEV program.

EPA acknowledges that some data indicate that some OBD systems may behave in the way suggested by this suggested condition for triggering an offramp. Thus, an OBD system might be affected by high-sulfur fuel and fail to register decreased catalyst performance. However, EPA believes that more data is needed to characterize this potential

[24] The validity of any opt-out from National LEV would depend in part on whether the underlying condition allowing opt-out has actually occurred. Where the initial state or manufacturer's opt-out was invalid, it would not provide an offramp for another manufacturer to opt-out of National LEV. Thus, throughout this notice when EPA refers to an initial opt-out as the condition that allows another opt-out, it refers only to valid initial opt-outs.

[25] OBD and Sulfur White Paper, March 1997 (Docket A–95–26, IV–B–06).

concern better. Also, as stated above, considerable efforts involving various stakeholders are underway to evaluate this and other related concerns further. EPA believes that, in the context of the National LEV program, it may be inappropriate to penalize a manufacturer who uses a system that performs as required on low-sulfur fuel but has sulfur-induced passes due to high-sulfur fuel. However, EPA needs to evaluate this potential problem properly on a case-by-case basis. To certify such a system, EPA would have to conclude that the effect was due solely to sulfur and that the OBD system could not otherwise account for the effects of high-sulfur fuel. EPA is also concerned that providing an offramp if the Agency failed to certify an OBD system upon a manufacturer's request puts the Agency in the difficult position of having to approve every request or else risk the collapse of the National LEV program, even if EPA believes that certification is not technically supportable.

EPA is proposing that manufacturers could opt out of National LEV if EPA, upon a written request from a manufacturer in relation to the certification of an OBD catalyst monitor system, fails to consider the use of the system because it indicates sulfur-induced passes when exposed to high-sulfur gasoline, even though it functions properly on low-sulfur gasoline. EPA does not intend to preclude the use of such systems out-of-hand, but believes it cannot at this time accept the offramp language proposed by manufacturers given the current state of knowledge and the need for EPA to evaluate requests carefully on a case-by-case basis. EPA is taking comment on the manufacturers' suggestion. EPA is also taking comment on an alternative that would allow manufacturers to opt out if EPA determined that an OBD system functioned properly on low-sulfur fuel, had sulfur-induced passes due solely to high-sulfur fuel and that the OBD system could not otherwise account for the effects of high-sulfur fuel, and EPA then refused to certify the OBD system because of the sulfur-induced

Second, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to approve modifications to, on a case-by-case basis, vehicles that exhibit sulfur-induced MIL illuminations due to high sulfur gasoline so as to eliminate the sulfur-induced MIL.''

This suggested offramp condition reflects the manufacturers' concern that exposure to high-sulfur fuel could cause the performance of the catalyst to degrade to the point of OBD detection and the MIL is therefore illuminated, even though the same catalyst would not have degraded enough to cause the MIL to illuminate if the vehicle had been operated on low-sulfur fuel. When such a MIL illumination problem is identified, under current regulations modifications to OBD systems to resolve the problem could be accomplished via field fixes or running changes, which are methods that allow a manufacturer (with EPA approval) to make changes to a previously certified emission control system configuration. With this offramp proposal, manufacturers are essentially requesting that they be allowed to determine when a sulfur-related MIL illumination is occurring in a given engine family and what the appropriate response is, and that if they are not allowed to implement their chosen response (e.g., if EPA does not approve a particular field fix or running change requested by a manufacturer) they are then provided an opportunity to exit the National LEV program.

EPA pledged to address the issue of sulfur-induced MIL illuminations on an in-use, case-by-case basis until future data and information enable a long-term resolution of this issue. This remains the current policy. EPA currently believes that it would be inappropriate to modify OBD systems unless a manufacturer were able to supply in-use data, or at least production-ready vehicle data, demonstrating that sulfur has an adverse effect on catalyst monitoring systems for specific engine families. EPA believes that the offramp language suggested by the manufacturers would be inappropriate because it would effectively force EPA to accept solutions to this problem that may not be technically supportable or else risk the termination of the National LEV program.

EPA is proposing that manufacturers could opt out if, based on a written request from a manufacturer, EPA declines to consider, on a case-by-case basis, the manufacturer's suggested modifications to vehicles that exhibit sulfur-induced MIL illuminations due to high-sulfur gasoline so as to eliminate the sulfur-induced MIL. As explained below, EPA is proposing that the National LEV regulations would define a specific process that would allow manufacturers to notify EPA of this type of problem and would require EPA to respond to a manufacturer's request (e.g., for a running change) within a specified time period. EPA is taking comment on the manufacturers' suggestion. EPA is also taking comment on an alternative that would allow manufacturers to opt out if, on a case-by-case basis, EPA determined that an OBD system exhibited sulfur-induced MIL illuminations due solely to high-sulfur fuel and failed to allow modifications to the vehicles to eliminate the sulfur-induced MIL.

Third, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to adjust I/M (240/ASM) cut points to account for the effect of the high sulfur content of current commercially available gasoline.''

Similar to the previous issue, manufacturers are concerned that high-sulfur levels could degrade catalysts to the point where vehicles would fail state Inspection/Maintenance (I/M) tests due to the high-sulfur fuel, and they are requesting that EPA adjust I/M standards upwards to account for the impact of sulfur. If EPA does not take such action, manufacturers have proposed that they be allowed to opt out of the National LEV program. EPA does not believe adjustments to I/M cut points to account for the impacts of sulfur are necessary or appropriate at this time. While data being collected by the several cooperative sulfur test programs may help EPA in assessing this issue, there is currently no data to determine whether an adjustment to I/M cutpoints is necessary and if so, the appropriate degree of such an adjustment. Although EPA is taking comment on the manufacturers' suggestion, EPA cannot justify establishing the above condition as a trigger for an offramp because the necessity for such an adjustment is not clear at this time. EPA is interested in obtaining data, including data on Tier 1 vehicles, that might help quantify the effect of sulfur on I/M testing and will work with all the stakeholders to develop the appropriate response if data indicates there is a problem in this instance.

Fourth, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to allow sufficient pre-conditioning procedures (including low sulfur fuel and additional vehicle preparation cycles) prior to in-use testing to remove the effects of high sulfur from currently available gasoline.''

Current emission test procedures require specific procedures to ''precondition'' each test vehicle before the vehicle enters the actual emission test portion of the procedure. This ensures that all vehicles enter the emission test in a similar condition. Current data suggests that the deleterious effect of sulfur on the catalyst is reversible by operating the vehicle for some period of time on a low-sulfur fuel. This suggested offramp condition is designed to alleviate

manufacturers concern that in-use vehicles tested by EPA (recall testing) might not experience enough preconditioning operation under current regulations to eradicate the effect of sulfur, and that this could cause vehicles to inappropriately fail in-use emission tests. This issue does not apply to preconditioning of vehicles for certification or Selective Enforcement Auditing (SEA) testing, since these vehicles would not have been exposed to high-sulfur fuel. Consequently, manufacturers propose that EPA allow them to expand the preconditioning of the vehicle used for in-use testing in order to guarantee the maximum reversal of the sulfur impact.

Current regulations allow the approval of additional preconditioning in ''unusual circumstances'' if the need is demonstrated (see 40 CFR 86.132–96(d)). EPA stated in the Final Framework Rule that ''[d]etrimental effects on National LEV vehicles from commercially available fuel sold in the 49 States could likely be considered an unusual circumstance'' (62 FR 31230). The specific preconditioning offramp language proposed by the auto manufacturers is inappropriate because it would remove EPA's ability to determine what type and amount of preconditioning is necessary and appropriate, particularly given that all stakeholders are continuing to explore the exact nature of sulfur's impact on various technologies and the degree of reversibility exhibited by different emission control technologies. EPA will work with manufacturers in the context of the currently applicable regulations to determine an appropriate level of allowable preconditioning. Any preconditioning procedure utilized under 40 CFR 86.132–96(d) to address sulfur effects on National LEV vehicles must be directed only at alleviating sulfur effects. EPA also notes that the automakers, oil industry, and EPA are currently testing the potential effects of various sulfur levels on clean vehicles, and in the context of this testing a pre-conditioning cycle to remove sulfur effects on catalysts is being analyzed. EPA will look at the results of this testing and other appropriate test results presented by interested parties and will determine whether any resulting sulfur preconditioning cycle is appropriate to apply to specific National LEV vehicles for in-use testing. Currently it is premature to discuss whether an offramp should be triggered by EPA's refusal to allow a specific sulfur preconditioning procedure since no such procedure has been developed. Sulfur effects seem to vary depending on catalyst type and location, so EPA will not automatically apply one procedure to all manufacturers unless new information arises from the various test programs that causes EPA to determine that to be an appropriate course of action.

EPA believes that given the current understanding of sulfur effects on in-use emission performance (as measured by in-use testing) and the case-by-case approach EPA is planning to use to address sulfur effects on OBD systems, manufacturers should only be able to opt out of National LEV based on preconditioning concerns if EPA fails to consider information before the Agency in a specific case showing a need for additional preconditioning. Thus, EPA is proposing that manufacturers would be able to opt out of National LEV if EPA declines to consider, on a case-by-case basis, prior to in-use testing, pre-conditioning procedures designed solely to remove the effects of high sulfur from currently available gasoline. EPA is taking comment on the manufacturers suggestion. EPA is also taking comment on an alternative that would allow manufacturers to opt out if EPA determined that there are significant effects of high-sulfur fuel on OBD systems, and then EPA declined to allow sufficient pre-conditioning procedures prior to in-use testing to remove the effects of high sulfur from currently available gasoline.

Fifth, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA declines to ensure that in-use, SEA, and/or certification testing of low emission vehicles is conducted using California Phase 2 reformulated gasoline (RFG).''

The regulations promulgated in the Final Framework Rule allow the use of California Phase II RFG for in-use, SEA, and certification testing. Certification test fuel specifications, which include California Phase II RFG, are part of the National LEV Core Stable Standards, and thus EPA cannot change these specifications over the objection of the manufacturers without providing an offramp for them to opt out of National LEV (See 62 FR 31202). Under National LEV, manufacturers will be able to choose to use specified Federal or California gasoline for exhaust emission testing, except where a specific fuel is required, such as Federal fuel for evaporative emissions testing. EPA's longstanding policy of conducting SEA and recall testing using the fuel on which the manufacturer chose to certify its vehicle will continue to apply under the National LEV program. EPA does not believe that a specific condition for opt-out related to use of California Phase 2 RFG for vehicle testing is necessary given the fuel specifications already in the National LEV regulations and EPA's policy regarding in-use test fuels. However, EPA is taking comment on allowing manufacturers to opt out of National LEV if EPA declines to conduct National LEV compliance testing on the fuel used by a manufacturer during certification of the vehicle or engine.

Sixth, the manufacturers suggested that they be allowed to opt out of National LEV if ''EPA, after concluding that there are significant effects of high sulfur fuel, fails to initiate a multi-party process to take appropriate action to ameliorate the effects of high sulfur gasoline.''

EPA has already committed that it will conduct a multi-party process to resolve in-use fuel sulfur issues if further testing reveals a significant sulfur effect on National LEV vehicles. See 62 FR 31221. However, EPA believes that it is unnecessary to make violation of this commitment a condition that would allow manufacturers to opt out of National LEV.

EPA is proposing the following process for manufacturers to opt out of National LEV if one of the conditions described above occurred. A manufacturer would have to send a request to EPA in writing identifying the particular problem at issue, demonstrating that it was due to in-use fuel sulfur levels, and requesting EPA to consider taking a specified action in response. EPA proposes that the Agency would have 60 days to respond to the manufacturer's request in writing, stating the Agency's decision and explaining the basis for the decision. If EPA fails to respond in this manner in the timeframe allotted, manufacturers would have 180 days after the deadline for the EPA response to decide to opt out of National LEV. Once EPA responded to the manufacturer's request, even if after the 60-day deadline, a manufacturer that had not yet opted out based on this offramp would no longer be able to do so, although if a manufacturer had already submitted an opt-out, that opt-out would be unaffected by EPA's subsequent response. Only the manufacturer that sent the initial request to EPA would be able to opt out if EPA failed to respond, but in section VI, EPA is proposing that if one manufacturer (or OTC State) opted out based on any of the identified offramps, other manufacturers would be able to opt out as well on the basis that there had been a change to the set of parties originally covered by the program.

EPA proposes that, consistent with opt-outs based on other offramps, a manufacturer that opts out based on this offramp must continue to comply with National LEV until the opt-out becomes effective. The manufacturer may set the effective date of its opt-out as early as the next model year or any model year thereafter. After the effective date of its opt-out, the manufacturer would be subject to any backstop Section 177 Programs (except for ZEV mandates) provided that at least two-years lead time (as provided in section 177) had passed since the adoption of the state's Section 177 Program, or would be subject to Tier 1 requirements in states without such backstops. Other than those ZEV mandates that would be unaffected by the National LEV program (i.e., existing ZEV mandates), if a manufacturer opts out, it will not be subject to any other ZEV mandates until two years of lead time has passed, which would run from the date the manufacturer opts out of National LEV and would be measured according to the section 177 implementing regulations.

In lieu of providing the offramps described above, EPA is also taking comment on an alternative approach that would make the provisions for EPA action described above a substantive requirement on EPA under the regulations, rather than making EPA's failure to act a condition that would allow manufacturers to opt out of National LEV. For example, the preconditioning regulations of 40 CFR 86.132–96(d) would be modified to include a requirement that EPA respond to any manufacturer's request made under that section within 60 days. In the event that EPA failed to respond within the specified time period, the manufacturer would be able to enforce the regulatory requirement against EPA, but would not also be able to opt out of National LEV.

D. Offramp for OTC States

In light of the proposed practically and legally binding commitments that the OTC States would make to the National LEV program, it is also appropriate to identify the limited circumstances under which the states should no longer be bound by those commitments. EPA is proposing two circumstances in which an OTC State could opt out of National LEV: (1) If a manufacturer were to opt out of National LEV; or (2) if EPA were to change a Stable Standard in a way that would make it less stringent and as a consequence, it would have changed EPA's initial determination that National LEV would produce emissions reductions equivalent to OTC State Section 177 Programs. EPA is proposing that if an OTC State were to take an identified legitimate offramp from National LEV, it would no longer be bound by any commitments that it made to the program in its initial opt-in package, other than its commitment to follow the National LEV regulations to transition from National LEV to a state Section 177 Program. An OTC State that was already in violation of its National LEV commitments would not be able legitimately to opt out of National LEV based on a manufacturer's opt-out.

To opt out of National LEV, EPA is proposing that the state official that signed the commissioner's letter in that state would send EPA an opt-out notification letter. The letter would state that the state was opting out of National LEV and specify the condition allowing the state to opt out. The date of the state opt-out would be the date that EPA received the opt-out letter, but EPA is proposing that there would be a two-year transition period before the state opt-out would become effective and the state could require compliance with a Section 177 Program without allowing National LEV as a compliance alternative. EPA is taking comment on whether the National LEV regulations should require a four-year transition period instead. Whether an opt-out letter alone would itself remove National LEV as a compliance alternative as of the effective date of the opt-out depends on how the state regulations are written. In opting into National LEV the state could structure its regulations and SIP to provide that National LEV would not be an alternative to the state's Section 177 Program if the state had opted out of National LEV pursuant to the National LEV regulations and the opt-out had become effective.

1. OTC State Offramp Based on Manufacturer Opt-Out

EPA is proposing that an OTC State would be able to opt out of National LEV without violating its commitment if a manufacturer opted out of National LEV under one of the identified offramps for manufacturers.[26] All parties would have made the choice to opt into National LEV with an understanding about the manufacturers and states that would be subject to the program. If those fundamental assumptions were to change, the parties to the voluntary program should have the opportunity to reevaluate their commitments and choose to opt out. Some OTC States have indicated, for example, that they believe it would not be feasible in their states to have some manufacturers subject to National LEV while others that had opted out of National LEV were subject to Section 177 Program requirements.

If a manufacturer opted out, EPA is proposing that OTC States would have a three-month period to submit an opt-out letter. The start of the three-month period would depend on the reason the manufacturer opted out. If a manufacturer were to opt out because of state action or inaction, or because of EPA's failure to consider a manufacturer's request related to effects of in-use fuels, the three-month period would start on the date EPA received the manufacturer's opt out notification.[27] For a manufacturer's opt-out based on a change to a Stable Standard, the three-month period would start on the date of EPA's finding that the opt-out was valid or the date of a final judicial ruling that a disputed opt-out was valid. If a state did not opt out within that three-month period, the opportunity to opt out based on that manufacturer action would no longer be available.

The state opt-out could not become effective until the state had provided manufacturers with the two-year lead time set forth in section 177, with the two-year lead time to start on the date that EPA received that state's opt-out letter. Until the state's opt-out became effective, manufacturers that had not opted out of National LEV or whose opt-outs had not yet become effective would continue to be subject to all the National LEV requirements for vehicles sold in that state. Manufacturers whose opt-outs had already become effective would not be affected by the state opt-out. Once the state opt-out became effective, all manufacturers would be subject to the state's Section 177 Program, if it had been adopted at least two years previously.[28] As the existence of a manufacturer opt-out as the basis for the state opt-out is a simple factual determination, EPA is not proposing that the Agency should evaluate the

[26] The condition allowing an OTC State to opt out would only arise if the initial manufacturers' opt-out were valid. See n. 27.

[27] However, if a manufacturer were to opt out because a state failed to submit a SIP revision by the applicable deadline and the manufacturer submitted the opt-out notification within six months of the applicable deadline for the SIP revision, the manufacturer's opt-out would not be final until the end of that six-month period. That date (not the date of the manufacturer's opt-out) would start the three-month period for state opt out.

[28] This is true even for a manufacturer that had opted out and set an effective date for its opt-out that was later than the effective date of the state's opt-out.

validity of a state opt-out before it could become effective.

2. OTC State Offramp Based on Change to Stable Standards

The second condition that would allow an OTC State to opt out of National LEV would be an EPA change to a Stable Standard that made National LEV less stringent and, if the change had been known at the start of National LEV, would have changed EPA's initial determination that National LEV would produce emissions reductions at least equivalent to the adopted OTC State Section 177 Programs. This offramp for OTC States is the counterpart to the manufacturers' offramp if EPA makes certain types of changes to Stable Standards that make the Standards more stringent.

In section IV above, EPA discussed its determination that National LEV would produce equivalent or greater emissions reductions than the alternative of adopted OTC State Section 177 Programs. In the modeling, EPA assumed that, in the absence of National LEV, programs would be in place in those OTC States that currently have Section 177 Programs (including backstop programs) and that the federal Tier 1 standards would apply in the other OTC States. EPA is proposing that, if EPA were to change any of the Stable Standards in a way that made the requirements less stringent, an OTC State could request EPA to reevaluate whether National LEV is still equivalent to the alternative approach of OTC State Section 177 Programs. The National LEV regulations would provide that within six months of receiving the request EPA would conduct such an evaluation or would determine that the revision to the standard or requirement would not make it less stringent.

In reevaluating equivalency, EPA would use the same model and inputs as it used in the initial equivalency determination. EPA would modify the modeling only to reflect the effect of the modified Stable Standard and the effect of having Section 177 Programs (identical in stringency to the Section 177 Programs modeled in the initial equivalency determination) in any additional OTC States that had adopted section 177 backstop programs since the initial equivalency determination. In reevaluating equivalency, EPA believes that the focus of the evaluation should be the ongoing validity of the initial decision to opt into National LEV, not whether the parties would make the same decision at the time of the reevaluation based on then-current conditions. This is consistent with the approach that the parties took to the periodic equivalency evaluation in the initialed MOUs. At the time of their opt-ins, the parties should not have anticipated that EPA would change one of the Stable Standards, and such a change would affect one of the basic assumptions used to calculate the relative benefits of National LEV and the alternative of OTC State Section 177 Programs. Thus, it is appropriate to reevaluate the equivalency of the two approaches given such a change, and provide the OTC States an opportunity to opt out of National LEV if it is no longer equivalent to the alternative.

EPA is proposing to include in the equivalency reevaluation the effect of Section 177 Programs in any additional OTC States that had adopted Section 177 Programs since the initial equivalency determination. This represents a compromise between OTC States' and manufacturers' positions. In making the initial equivalency determination, EPA is proposing to compare National LEV to the alternative of OTC State Section 177 Programs. See section IV. As discussed above, EPA is proposing to assume that Section 177 Program requirements would apply in those OTC States that currently have the requirements or backstop requirements in their state law or regulations and that the federal Tier 1 standards would apply in the other OTC States. The OTC States requested that EPA take a somewhat different approach to the initial equivalency determination by assuming that Section 177 Programs would also apply in particular OTC States that are currently in the process of developing such regulations. For the initial determination, such a change in the assumptions would have no effect on EPA's finding that National LEV would produce emissions reductions at least equivalent to those that would be produced by the alternative. EPA performed a sensitivity analysis for the initial equivalency determination to analyze the effects of the most optimistic assumptions regarding adoption of Section 177 Programs by OTC States, which indicated that even with those assumptions National LEV would still produce emissions reductions equivalent to or greater than that alternative. However, given the OTC States' concern, EPA believes it would be appropriate to modify the inputs to any reevaluation to reflect the then-current reality in terms of which OTC States had actually adopted Section 177 Programs. The modeling would continue to assume that all states with Section 177 Programs would have the same requirements used in the initial equivalency modeling, as discussed above. Thus, the reevaluation would not reflect any changes in the state's legal authority under the CAA to adopt programs subsequent to their decision to opt into National LEV, but it would take into account subsequent actions taken by the OTC States based on legal authority they had at the time of the decision.

EPA does not believe it would be appropriate to include in the reevaluation of equivalency the effects of other changes in circumstances affecting emissions reductions under National LEV or the alternative, such as changes to California's LEV program. At the time of opt-in, all of the parties will be aware that circumstances might change over the period that National LEV is in effect. For example, California might modify its requirements during that time. In making the decision to opt into National LEV and choose it over the alternative for a given period of time, the parties will have to evaluate the likelihood that any of the relevant circumstances would change sufficiently to reverse their inclination to opt in. Thus, the OTC States will have to consider the likelihood that California would modify its CAL LEV requirements and the likely effect of such a modification, and decide whether to commit to National LEV in lieu of a state Section 177 Program that could include any subsequent changes to CAL LEV. By opting in, the OTC States will have made the decision that the possibility of those benefits is outweighed by the certainty of the benefits from National LEV (if it goes into effect). The reevaluation of equivalency should not allow parties to reconsider that initial choice with the benefit of hindsight. National LEV will only come into effect if the parties to the program commit to it for a specified duration, and an EPA change to the underlying standards should not become an opportunity to undermine that basic commitment.

If EPA made a change to a Stable Standard that would have changed the equivalency determination, EPA is proposing that the OTC States would have three months to opt out, running from the date that EPA found that National LEV would no longer produce emissions reductions equivalent to those that would be produced by OTC State Section 177 Programs. If a state did not opt out within that three month period, the opportunity to opt out based on that finding would no longer be available.

Also consistent with the other state offramp, a state opt-out based on a change to a Stable Standard could not become effective until it had provided

manufacturers with the two-year lead time set forth in section 177, with the two-year lead time to start on the date that EPA received the state's opt-out letter. The manufacturers' obligations if a state took this offramp would be determined the same way as described in the preceding section (when an OTC State opts out because a manufacturer opted out).

E. Lead Time Under Section 177

The proposed opt-out regulations discussed above incorporate and rely on EPA's proposed interpretation of section 177's requirements related to state adoption of the CAL LEV program. Section 177 of the Act provides the legal authority for states to adopt ''standards relating to the control of emissions from new motor vehicles'' and governs the timing of implementation of such requirements. It provides that a state may adopt new motor vehicle standards only if they are identical to California standards for a given model year for which EPA has granted a waiver, and the state must ''adopt such standards at least two years before commencement of such model year (as determined by regulation of the Administrator).'' EPA has previously adopted regulations interpreting this provision. See 40 CFR 85.2301 *et seq.* These regulations do not adequately address the issue of when the two-year lead time starts for backstop Section 177 Programs (i.e., a Section 177 Program that allows National LEV as a compliance alternative) after National LEV has come into effect.

It is not clear under section 177 or EPA's current implementing regulations when the two-year lead time period would start if, after National LEV came into effect, a state with a backstop Section 177 Program were to delete National LEV as a compliance alternative (either in violation of its commitment to National LEV or legitimately by taking an offramp) or if a manufacturer legitimately decided to opt out of National LEV. Therefore, as part of the National LEV regulations, EPA is proposing regulations to determine the date on which the two-year lead time period starts in the special circumstances that arise only when a state has a backstop Section 177 Program that allows National LEV as a compliance alternative and National LEV has gone into effect.

The meaning of the two-year lead time provision in section 177 is ambiguous in the context of National LEV and backstop Section 177 Programs. There are at least three possible ways to approach this provision in this context. One possible approach is that the two-year lead time period starts when the state adopts the backstop Section 177 Program. Under this interpretation, section 177 would require the state to have adopted its backstop Section 177 Program at least two years before the model year to which it applies. After the two-year lead time had run from the date of adoption, the state could remove National LEV as a compliance alternative and require immediate compliance with the Section 177 Program at any time. EPA does not believe this is a proper application of section 177 in the National LEV context. The two-year lead time requirement is intended to give manufacturers time to make the changes in product planning, production and distribution that are involved in switching from one motor vehicle program to another. It recognizes the practical difficulties in making large production shifts in very short time-frames. Where manufacturers have had the legal authority to comply with National LEV in lieu of the state program, allowing states to drop National LEV as a compliance alternative with no lead time would allow states to circumvent the protection that Congress conferred on manufacturers in section 177.[29] Thus, EPA is not proposing to adopt this approach.

Another possible approach to section 177 in these limited circumstances, and the one that EPA is proposing to adopt, is that, if a manufacturer will need to comply with a state Section 177 Program after National LEV has come into effect, the two-year lead time runs from the date that the manufacturer knew that it would need to comply with the state Section 177 Program rather than with National LEV. EPA believes this is the most appropriate way to implement section 177 in this special circumstance, as long as manufacturers are able to waive the two-year lead time requirement. Given that the failure to provide statutory lead time renders noncomplying state programs unenforceable, rather than rendering them void,[30] there should be little question that manufacturers have the ability to waive the lead time requirement if they choose. This approach to section 177 (including both when lead time starts and that manufacturers can waive the lead time) ensures that, in the context of National LEV and state backstop Section 177 Programs, two of Congress' purposes in adopting section 177 are met—it protects manufacturers from having insufficient time to switch from one motor vehicle program to another, and it allows states to ensure that they can achieve the extra emissions reductions from motor vehicles contemplated by section 177.

EPA's proposed interpretation of section 177 is reflected in today's proposed regulations regarding what requirements would apply in the unlikely event that an OTC State were to break its commitment to National LEV or that a manufacturer or an OTC State were to opt out of National LEV. For example, if a state with a backstop Section 177 Program were to delete National LEV as a compliance alternative after National LEV had come into effect, the state would have changed the manufacturers' regulatory obligations and the manufacturers would be entitled to two-years lead time running from the date of the state action purporting to change the manufacturers' regulatory obligation. By opting into National LEV, manufacturers would not be agreeing to waive the lead time required under section 177 in a circumstance where a state broke its commitment to National LEV and deleted National LEV as a compliance alternative, and thus the manufacturer would get the full two-years lead time set by section 177.

Another example demonstrates how the waiver provision modifies the two-year lead time. If an offramp were triggered and a manufacturer were to decide to opt out of National LEV and then set an effective date one year from the time of its opt out, under today's proposed regulations, upon the effective date of the opt out, the manufacturer would be required to comply with Section 177 Programs (except for backstop ZEV mandates) in any state that had not broken its commitment to National LEV. To the extent that this provides the manufacturer with less than two-years lead time, the manufacturer will have waived the lead time provision by opting into National

[29] EPA is proposing to reject the date of state adoption of regulations as the starting date for determining whether the section 177 lead time requirement has been met only in those situations where a state has adopted a backstop Section 177 Program and National LEV has come into effect. For those states that already have backstop Section 177 Programs, if National LEV does not come into effect, the date of adoption of the state regulations is still the controlling date for determining when the two-year lead time requirement has been met. In those states, the only legal option available to manufacturers has been to comply with the state Section 177 Program. The theoretical possibility that they might not have to comply with the state requirements does not mean that they have not been given the two-year lead time required by section 177.

[30] See *American Automobile Manufacturers Ass'n* v. *Greenbaum*, No. 93–10799–MA, slip op. at 23, 1993 WL 442946 (D. Mass. Oct. 27, 1993), *aff'd., 31 F.3d 18 (1st Cir., 1994).*

LEV combined with setting the effective date for its opt-out. For backstop ZEV mandates, however, manufacturers would not have to comply with the ZEV mandate until the two-year lead time period had passed (which would start running from the date of the manufacturer's opt-out) because in opting into National LEV manufacturers are not waiving the two-year lead time with respect to ZEV mandates.

A third possible approach to section 177's two-year lead time requirement provides an alternative basis for today's proposal. Under this approach, the lead time requirement differs depending upon the factual setting. In some instances, measuring lead time from the date of state adoption of a backstop Section 177 Program still provides manufacturers adequate protection and thereby implements both the clear language of the statute and the clear intent of the provision. For example, in opting into National LEV, a manufacturer is choosing to accept a compliance alternative that involves some risk of a rapid change in the manufacturer's regulatory obligations if the manufacturer opts out. However, as proposed here, the program that the manufacturer is opting into provides substantial protection for manufacturers with regard to the applicability of backstop Section 177 Programs upon an opt-out. Because the manufacturer controls the effective date of the opt-out and the manufacturer would not be subject to a backstop Section 177 Program until its opt-out became effective, the manufacturer can ensure that it does not become subject to a Section 177 Program without whatever lead time it views as adequate. In this situation, the statutory intent to ensure that manufacturers have lead time is met by providing that a state can immediately implement a Section 177 Program for any manufacturer whose opt-out from National LEV is effective, if the backstop Section 177 Program was adopted at least two years previously. Thus, for situations where the manufacturer controls the date that it becomes subject to the Section 177 Program, section 177 would start the two year lead time period from the date of state adoption of the backstop Section 177 Program.

The other type of situation is one where the state takes an action imposing requirements on a manufacturer under section 177 and the manufacturer has no control over the timing of those requirements. For example, a state might remove National LEV as a compliance alternative from its state regulations, leaving only the Section 177 Program requirements in place, which the state had adopted at least two years earlier. In that instance, making the manufacturer immediately subject to the section 177 requirements would be contrary both to the purposes of the section 177 lead time requirement and to the intended operation of National LEV. By opting into National LEV the manufacturer did not accept the possibility that a state might commit to National LEV and then violate that commitment. Nor is there any way for the manufacturer to protect itself against an immediate application of the section 177 requirements by the violating state, except not to opt into National LEV at all. Under the circumstances where the state controls the timing of the applicability of the Section 177 Program, the section 177 lead time provisions would be implemented by requiring two years of lead time from the date that the manufacturer knew it would become subject to the state's Section 177 Program without the option of complying with National LEV as an alternative.

The interpretation of section 177 that EPA is proposing would apply only in the very unique situation presented by National LEV—where states and manufacturers are both voluntarily opting into the national program. It does not necessarily provide any guidance for other circumstances.

VII. National LEV Will Produce Creditable Emissions Reductions

In the Final Framework Rule, EPA noted that National LEV must be an enforceable program to grant states credits for SIP purposes for emission reductions from National LEV vehicles. As discussed in the Final Framework Rule, there are two aspects to ensuring that National LEV is enforceable. See 62 FR 31225 (June 6, 1997). First, the National LEV program emissions standards and requirements must be enforceable against those manufacturers that have opted into the program and are operating under its provisions. In the Final Framework Rule, EPA found that the National LEV program meets this aspect of enforceability. Second, the National LEV program itself must be sufficiently stable to make it likely to achieve the expected emissions reductions. To achieve the expected emissions reductions from National LEV, the offramps must not be triggered and the program must remain in effect for its expected lifetime. EPA also found in the Final Framework Rule that the program elements finalized in that rule would contribute to a stable National LEV program. In today's notice, EPA proposes that the complete National LEV program as contained in today's proposal and the Final Framework Rule would be sufficiently stable to make the program enforceable and hence creditable for SIP purposes.

The only circumstances that would allow the National LEV program to terminate prematurely would be an OTC State's failure to meet the commitments it makes regarding adoption of motor vehicle programs under section 177 of the Act, certain EPA changes to Stable Standards that would allow either a manufacturer or an OTC State to opt out of National LEV, or certain EPA actions or inactions related to in-use fuels.[31] The Final Framework Rule described the basis for EPA's belief that the Agency is unlikely to change any of the Stable Standards in a manner that would give the auto manufacturers the right to opt out of National LEV. Here EPA proposes to find that National LEV is stable because EPA believes that an OTC State is unlikely to fail to meet its commitments to National LEV, EPA is unlikely to change any of the Stable Standards in a manner that would allow the OTC States to opt out of National LEV, and EPA is unlikely to act in a manner that would allow manufacturers to opt out based on the proposed offramps related to in-use fuels.

A. OTC States Will Keep Their Commitments to National LEV

As discussed above, under this proposal there are three ways in which an OTC State could violate its commitments to National LEV and allow the manufacturers to opt out of the program: (1) Attempt to have a state Section 177 Program (including ZEV mandates, except in states with existing ZEV mandates) that was in effect and that prior to MY2006 did not allow National LEV as a compliance alternative; (2) failure to submit a National LEV SIP revision to EPA by the specified date; or (3) failure to submit an adequate National LEV SIP revision. EPA is confident that the OTC States will keep all of their commitments to National LEV for the duration of the program. The OTC States' practical ability to meet their commitments, the fact that the OTC States would have made commitments to the program through both practically binding instruments and legally binding instruments, and the effects of a

[31] EPA is also proposing that OTC States could opt out if a manufacturer opted out, and manufacturers could opt out if either another manufacturer or an OTC State opted out. Yet for purposes of evaluating the stability of the National LEV program, EPA need not consider these secondary opt-out opportunities because they would only arise if an OTC State or EPA had already triggered another offramp.

violation of their commitments, all combine to support a finding that the states are unlikely to trigger an offramp for manufacturers.

First, the OTC States should have no practical difficulty carrying out their commitments. As proposed, after the OTC States have opted into National LEV and the program has come into effect, the states would need to adopt regulations (or modify existing regulations) to commit to accept National LEV as a compliance alternative for the specified duration and to submit those regulations to EPA as a SIP revision within one year (or for a few states, eighteen months) of the date of EPA's finding that National LEV is in effect. Based on discussions with each of the OTC States on the time needed to complete a rulemaking in that state, EPA believes that these are realistic deadlines for state action, which would provide sufficient time for the states to complete their regulatory processes and submit their SIP revisions. (See docket no. A–95–26 for memo on these discussions.) In addition, the SIP submissions follow fairly quickly upon the initial OTC State opt-ins, which maintains the political momentum for the states to follow through on the second step of their commitments. The deadline for SIP submissions would require states to begin developing their regulatory commitments almost immediately after their Governors issue executive orders (or letters) committing to National LEV and directing the state agencies to submit the SIP revisions. EPA believes it is highly unlikely that states would go through all the effort to sign up to the National LEV program and then almost immediately derail the program by failing to submit a SIP revision. There appears to be no way in which such an action could benefit a state, and there could be a substantial negative public reaction associated with such a reversal. Apart from the need to adopt regulations and submit a SIP revision, there is no other action states need to take to uphold their commitments to National LEV and hence no practical impediment to states carrying out their commitments to National LEV.

In addition, the OTC States would be practically and legally bound to uphold their commitments to allow National LEV as a compliance alternative to a state Section 177 Program for the duration of their commitments. The initial opt-ins from the Governors and state commissioners would provide a substantial expression of support for National LEV at high state political levels. Through the opt-in instruments, the state would have publicly committed to accept National LEV as a compliance alternative to a state Section 177 Program for the duration of the commitment. The executive order (or letter) would both invest the commitments with the full authority of the state Governors and initiate the second step of the opt-in. An explicit directive from the Governor to submit such a SIP revision should assure that the state agency will initiate the ordered action. The only foreseeable cause of failure to do so would be if a Governor subsequently countermanded the directive. EPA believes this eventuality is highly unlikely, given both the short time frame in which such a reversal would have to occur and all of the other incentives for the states to meet their commitments, such as the environmental costs of allowing the manufacturers to opt out once the program has begun. While the outcome of a government rulemaking process cannot be predetermined, these same incentives for the states to meet their commitments make it highly probable that, once proposed, the states will finalize the regulatory changes and SIP revisions necessary to complete their commitments to National LEV.

Once EPA has approved a National LEV SIP revision, the state would be legally bound to uphold its commitment. As discussed above in section V.C.4, an approved SIP provision committing a state to accept National LEV as a compliance alternative to a state Section 177 Program or ZEV mandate would preclude a conflicting state law that required manufacturers to comply with a state Section 177 Program or ZEV mandate without allowing National LEV as a compliance alternative. Until EPA approved a subsequent SIP revision, manufacturers could enforce the initial SIP commitment in court. Furthermore, EPA would be obligated to disapprove a subsequent SIP revision that violated a state's commitment to allow National LEV as a compliance alternative for the specified period because it would likely interfere with other states' ability to attain the NAAQS. Other states would have reasonably relied upon the emissions reductions from National LEV for attainment and maintenance, and the effect of approving the new SIP revision would almost certainly be to deprive the states of those reductions.

Even if the state were not bound to its commitment legally, the practical effects of not meeting its commitment provide an independent basis for finding that National LEV is stable. The structure of the proposed opt-out provisions would establish substantial disincentives for OTC States to violate their commitments, given the requirements that would apply to vehicles sold in the violating state, the opportunity it would provide for manufacturers to opt out of National LEV, and the consequences of such an opt-out. As discussed in detail above in section VI.A.1, EPA is proposing that, for an OTC State that has violated its commitment by attempting to have a state Section 177 Program that does not allow National LEV as a compliance alternative, the consequences in that violating state would be that under National LEV all manufacturers would be able to comply with Tier 1 tailpipe standards and not count those vehicles in the fleet NMOG average. Thus, the violating state would receive SIP credits based on this reduced compliance obligation. Similarly, if a state fails to submit its SIP revision committing to National LEV or submits an inadequate SIP revision, the same reduced tailpipe standard requirements would apply in the violating state for any manufacturer that opted out of National LEV until the manufacturer's opt out became effective. Thus, the violating state would (or is likely to, depending upon the type of violation) receive higher emitting vehicles and commensurately fewer SIP credits for a potentially long period of time. (See section VI.A above for a discussion of timing of requirements applicable to manufacturers under various options.)

In addition, states would be further discouraged from violating their commitments because a state violation would give manufacturers the opportunity and reason to opt out of National LEV, and manufacturer opt-outs would hurt air quality in all states. If National LEV is in effect, a substantial number of the OTC States and probably all of the 37 States are unlikely to have backstop Section 177 Programs in place. States without backstop Section 177 Programs would not be able to implement a state Section 177 Program for over two years because of the time needed to adopt a program and the two years of lead time required under section 177. During this period, manufacturers that had opted out of National LEV would have to comply only with federal Tier 1 standards for sales of new motor vehicles in those states without backstop programs. Also, sales of these Tier 1 vehicles would further increase vehicle emissions in both the violating state and states with backstop Section 177 Programs as well, through migration of dirtier Tier 1 vehicles.

EPA is confident that the combination of the feasibility of compliance with the OTC State commitments, the practical

and legal constraints on a state breaking its commitment, and the environmental and SIP-related consequences of a state breaking its commitment make it highly unlikely that an OTC State that has opted into National LEV will violate any of its commitments to the program.

B. EPA Is Unlikely To Change a Stable Standard To Allow OTC States To Opt Out of National LEV

In the Final Framework Rule, EPA explained why the Agency is unlikely to change any of the Stable Standards in a manner that would give the auto manufacturers the right to opt out of National LEV. EPA also believes it is unlikely to change any of the Stable Standards in a manner that would allow the OTC States to opt out of National LEV. As proposed above in section VI.B.2, an OTC State would be able to opt out of National LEV if EPA changed a Stable Standard in a way that made it less stringent and as a consequence would have changed EPA's initial determination that National LEV would produce emissions reductions equivalent to the OTC State Section 177 Programs that would be in place in the absence of National LEV. Given the greater emissions reductions that would be produced by National LEV compared to the alternative of OTC State Section 177 Programs (discussed above in section IV), only a significant weakening of a Stable Standard would be likely to have changed EPA's determination that National LEV would produce emissions reductions at least equivalent to the alternative. Such a weakening of a Stable Standard would be contrary to EPA's mission of environmental protection and would jeopardize the National LEV program, which the Agency strongly supports and in which EPA has invested significant resources.

EPA's mission is to protect human health and the environment, in this case by reducing air pollution from motor vehicles. Absent a serious problem of technical feasibility, EPA has no reason to make the Stable Standards significantly less stringent over time. EPA has evaluated each of the National LEV requirements contained in the Final Framework Rule and today's proposal, and the Agency believes that they are technically feasible. Almost all of the technical requirements for vehicles certified under National LEV are consistent with the provisions of the draft MOU initialed by the motor vehicle manufacturers' associations as an acceptable approach to the program, which strongly indicates that the manufacturers believe the National LEV requirements are feasible. While a few requirements, such as the Supplemental Federal Test Procedure (SFTP), were not fully developed at the time the manufacturers initialed the draft MOU, the manufacturers are extremely unlikely to sign up to a voluntary program with substantial outstanding technical issues and no identified approach for resolution. Moreover, the requirements under National LEV are no more stringent than the requirements under the California LEV program. EPA has granted a waiver of preemption under section 209 of the Act for the California LEV program after finding that the standards were technically feasible. See 58 FR 4166 (Jan. 13, 1993).

In addition, EPA strongly supports National LEV and is extremely unlikely to act in a manner that would risk dissolution of the program. For many areas of the country National LEV would be a very cost-effective program to reduce motor vehicle emissions of pollutants that harm public health and the environment. EPA has invested significant resources in facilitating the negotiations between the parties and developing the regulatory framework for the National LEV program, and the Agency would not lightly jeopardize the results of this effort.

C. EPA Is Unlikely To Fail To Consider In-Use Fuels Issues To Allow Manufacturers To Opt Out of National LEV

EPA also believes that the Agency is unlikely to act or fail to act in a manner that would allow the manufacturers to opt out of National LEV based on an offramp related to in-use fuels. As discussed above, EPA is proposing an additional offramp for manufacturers to address their concerns regarding the potential effects of fuel sulfur levels on the emission performance of National LEV vehicles. This offramp could be triggered if manufacturers assert that one of the identified potential problems related to fuel sulfur levels arises and EPA declines to consider allowing manufacturers to take the identified actions in response. EPA recognizes that the potential effects of fuel sulfur levels are of particular concern to manufacturers. If ongoing additional investigations indicate problems that need to be addressed, EPA will need to reassess the fuel sulfur issue in both the National LEV context and other EPA motor vehicle emission control programs, as discussed above in section VII.C. Given EPA's recognition of the manufacturers' concerns and the ongoing process for resolving them outside of the National LEV context, EPA believes it is highly unlikely that the Agency would fail to respond to a manufacturer's request to address any problems that are identified or decline to consider any reasonable solutions. In addition, EPA would have all the same incentives here to avoid taking any action that would jeopardize the benefits from the National LEV program, as discussed above for changes to Stable Standards.

VIII. Additional Provisions

A. Early Reduction Credits for Northeast Trading Region

EPA is proposing that manufacturers may generate early reduction credits for sales of vehicles in the Northeast Trading Region (NTR) in MY1997 and MY1998, prior to the start of National LEV in MY1999. This would provide manufacturers added flexibility as well as create an incentive for them to introduce cleaner vehicles into this region before MY1999, thus providing air quality benefits sooner. EPA proposes to take the same approach to these early reduction credits in the NTR as the Final Framework Rule took to the early reduction credits earned in the 37 States before MY2001. Since the credits cannot be used or traded before MY1999, EPA is proposing to treat any credits earned in the NTR before MY1999 as if earned in MY1999 for annual discounting purposes. This is consistent with EPA's approach to early reduction credits in the 37 States and with California's approach to allowing early generation of credits. These credits will be subject to the normal discount rate starting with MY1999, meaning they will retain their full value for MY2000 and will be discounted from then on. In addition, EPA is proposing that, consistent with the approach to early reduction credits in the 37 States, early reduction credits in the NTR will be subject to a one-time ten percent discount applied in MY1999, as discussed below.

Manufacturers would be able to generate early reduction credits in the NTR by supplying vehicles with lower emissions than otherwise required during this time period in any OTC State that is in National LEV for MY1999 and later. Specifically, manufacturers would be able to generate credits for sales of TLEVs, LEVs, ULEVs and ZEVs sold in the OTR outside New York and Massachusetts in MY1997, and outside of New York, Massachusetts and Connecticut in MY1998, to the extent that such vehicles can be sold under EPA's cross-border sales policy.[32]

[32] See docket no. A–95–26, IV–A–03 for EPA's cross border sales policy. The current cross border sales policy allows sales of vehicles certified to California's emission standards in states contiguous to, or within 50 miles of, California and states that

Additionally, manufacturers could generate credits for sales of vehicles achieving a lower fleet average NMOG value than required under the state Section 177 Programs in New York and Massachusetts in MY1997, and in New York, Massachusetts and Connecticut in MY1998, assuming that those states have committed to National LEV for MY1999 and later. Manufacturers would not be able to take credit for vehicles sold to meet the applicable NMOG averages in New York, Massachusetts and Connecticut in MY1997 and MY1998, as that would be using vehicles required independent of National LEV to reduce the stringency of the National LEV requirements, and hence would be ''double-counting.''

EPA believes that there are substantial benefits to encouraging early introductions of cleaner vehicles. However, the Final Framework Rule included a discount for early reduction credits in the 37 States in part to address a concern that giving full, undiscounted credits for all early reductions may generate some windfall credits. See 62 FR 31214–31215. ''Windfall'' credits are credits given for emission reductions the manufacturer would have made even in the absence of an early credit program. The purpose of giving credits for early reductions is to encourage manufacturers to make reductions that they would not have made but for the credit program. Because credits can be used to offset higher emissions in later years, if manufacturers are given credits for early reductions they would have made even without a credit program, an early credit provision could decrease the environmental benefits of the program.

EPA is taking comment on the potential for windfall credits in the NTR and whether ten percent is an appropriate discount factor. Specifically, EPA requests comment on whether a lower number such as five percent or no discount factor would be more appropriate in light of the probability that manufacturers would introduce cleaner vehicles early absent early reduction credits, and the fact that National LEV is a voluntary program that will produce cleaner vehicles than EPA has the authority to require before MY2004. In addition, EPA requests comment on whether it should apply a uniform approach to early reduction credits in the 37 States and the NTR, or whether there are reasons to take different approaches in the two regions. EPA is also taking comment on whether ten percent (or some lower percent or zero) is the appropriate discount factor for early credits in the 37 states given that National LEV is now proposed to start in MY1999 instead of MY1997.

B. Calculation of Compliance With Fleet Average NMOG Standards

Various provisions in the Final Framework Rule assume that National LEV is a 49-state program. However, it is possible that National LEV would continue even if one or more OTC States opt out. Having less than 49 states in the National LEV program would require changes in the Final Framework Rule's provisions for determining compliance with the fleet average NMOG standards.[33]

EPA is proposing to modify the Final Framework Rule so that the NMOG fleet average calculation will not include vehicle sales in any OTC State that legitimately opts out once that opt-out becomes effective.[34] This would help ensure that states that opt into National LEV will receive the anticipated emissions benefits as long as they and the auto manufacturers participate in National LEV. The opposite approach (i.e., including all vehicle sales in any OTC States that are not participating in National LEV) would concentrate cleaner cars in those OTC States not in National LEV at the expense (environmentally) of OTC States committed to National LEV.

EPA is taking comment on whether to count in a manufacturer's fleet average NMOG calculation those California-certified vehicles that are sold under EPA's Cross Border Sales (CBS) policy in states that are participating in National LEV. A National LEV program consisting of less than all of the OTC States would necessitate the continuation of EPA's CBS policy for those manufacturers producing vehicles certified separately to Federal and California standards. This policy allows manufacturers to introduce into commerce California-certified vehicles in states that are contiguous to California or other states that have adopted the Section 177 Program. Thus, if a state were not participating in National LEV and instead had a Section 177 Program in effect, under the CBS policy, manufacturers would be allowed to sell California-certified vehicles in National LEV states bordering the non-participating state. This raises the issue of how to count such California-certified vehicles sold in those contiguous states in calculating the manufacturer's compliance with its National LEV fleet average NMOG requirement.

One approach to the fleet average NMOG calculation would be to include in the calculation all vehicle sales in the states participating in National LEV regardless of whether the vehicles are California or federally-certified. EPA is concerned that this might encourage manufacturers to sell only (or primarily) California-certified vehicles in the OTR (at least in MY1999 and MY2000), which might not be allowed under the Clean Air Act. It might also raise warranty and recall problems if those vehicles were found to violate LEV (but not Tier 1) standards in use. Another alternative would be to count only vehicles certified to federal standards in the fleet average NMOG calculation. EPA is also taking comment on whether it would be appropriate to count some (but not all) types of California-certified vehicles in the National LEV fleet average NMOG calculation. In any event, EPA would want to ensure that manufacturers would not include those vehicles sold in National LEV states to consumers residing in a state with a Section 177 Program in the manufacturers' compliance determinations for both the National LEV NMOG average and the applicable Section 177 Program; it would not be equitable to allow manufacturers to take credit for such sales for two independent programs.

C. Certification of Tier 1 Vehicles in a Violating State

If an OTC State violated its commitment to National LEV, in some instances National LEV would only require manufacturers to supply vehicles meeting Tier 1 emission standards in the violating state. EPA is proposing that, as one means of implementing this provision, EPA would allow a manufacturer to change the compliance levels of its vehicles sold in a violating OTC State through the submission of running changes to EPA. A running change is a mechanism manufacturers use to obtain approval

have a Section 177 Program in place. Thus, in the OTR for MY1997 and MY1998, manufacturers would be allowed to sell California vehicles in Maine, New Hampshire, Vermont, Massachusetts, New York, Rhode Island, Pennsylvania, and Connecticut.

[33] These changes would also be required if not all OTC States opted in. EPA continues to believe that National LEV should be a 49-state program. EPA notes that the auto manufacturers have repeatedly stated that all OTC States must opt into National LEV. However, if the auto manufacturers and the relevant OTC States were interested in National LEV proceeding even with less than 49 states participating, EPA would want National LEV to proceed. The air quality benefits of National LEV are too important not to do so.

[34] Similarly, if National LEV came into effect without all OTC States opting in, EPA is proposing that vehicle sales in those states would not be included in the NMOG average. EPA's proposed treatment of vehicle sales in OTC States that break their commitments is addressed in the proposed regulatory provisions and preamble discussion of manufacturer and OTC State offramps.

from EPA for modifications or additions to vehicles or engines that have already been certified by EPA but are still in production. By allowing a manufacturer to change the compliance levels of its vehicles through a running change only applicable to vehicles sold in a violating OTC State, EPA would give a manufacturer a procedure to respond to a state violation in a timely fashion and produce a real disincentive for an OTC State to violate its commitment.

Manufacturers currently use running changes in the federal certification process to obtain EPA approval of a change in specified vehicle configuration or an addition of a vehicle or engine to an approved engine family that is still in production.[35] A manufacturer may notify the Administrator in advance of or concurrent with making the addition or change. The manufacturer must demonstrate to EPA that all vehicles or engines affected by the change will continue to meet the applicable emission standards. This demonstration can be based on an engineering evaluation and testing if the manufacturer determines such testing is necessary. The Administrator may require that additional emission testing be performed if the manufacturer's determination is not supported by the data included in its running change application. EPA may disapprove a running change request, which could then require manufacturers to remedy vehicles or engines produced under the request.

EPA is proposing to exercise its current authority to allow manufacturers to use a running change to modify quickly the compliance level of their National LEV vehicles to Tier 1 tailpipe standards when the National LEV regulations allow a manufacturer to sell vehicles meeting Tier 1 tailpipe standards in a particular state. Running changes submitted under this proposal will reflect only the change in emission standards the vehicles are meeting. Vehicles sold in an OTC State that had violated its National LEV commitment will be treated as Tier 1 vehicles for purposes of federal enforcement requirements and warranty limits and would not count in the manufacturers' NMOG fleet average. A manufacturer providing vehicles that in a violating OTC State were complying at only Tier 1 levels and were meeting more stringent standards elsewhere would be required to modify its certification application to reflect the change and install a modified Vehicle Emission Control Information (VECI) label. The label would state that the vehicle complies with TLEV, LEV, or ULEV standards, but if such vehicle is sold in the specified violating OTC State, such vehicle is certified to Tier 1 tailpipe standards. The modified VECI label will highlight the distinction in vehicle compliance levels to consumers and the general public. EPA believes that running changes for this particular situation may be allowed by applying good engineering judgment, rather than additional emission testing, since a vehicle certified to National LEV TLEV, LEV, ULEV, or ZEV standards should also meet Federal Tier 1 standards. In the instance where an engineering evaluation would be insufficient to support a change, EPA would require additional data.

Vehicles complying only with Tier 1 tailpipe standards and sold in an OTC State that had violated its National LEV commitment would be treated as Tier 1 vehicles in that state for purposes of demonstrating compliance with federal requirements and SIP credits. These vehicles would be held only to the Tier 1 tailpipe standards for purposes of recall liability in that state. For example, a vehicle recall on a National LEV vehicle certified to LEV standards might not be subject to recall action in the violating state if the problem causing the recall did not cause the vehicles to exceed the Tier 1 standards.[36]

D. Provisions Relating to Changes to Stable Standards

The Final Framework Rule provided that, with certain exceptions, manufacturers would be able to opt out of National LEV if EPA changed a motor vehicle requirement that it had designated a ''Stable Standard.'' The Stable Standards are divided into two categories: Core Stable Standards and Non-Core Stable Standards. Core Stable Standards generally are the National LEV standards that EPA could not impose absent the consent of the manufacturers. Non-Core Stable Standards are other federal motor vehicle standards that EPA does not anticipate changing for the duration of National LEV. For both Core and Non-Core Stable Standards, EPA can make changes to which manufacturers do not object. For Non-Core Stable Standards, EPA can also make changes that do not increase the stringency of the standard or that harmonize the standard with the comparable California standard. EPA can make other changes to any of the Stable Standards, but such changes would allow the manufacturers to opt out of National LEV. See the Final Framework Rule for more detail on the specific Stable Standards and the offramp for manufacturers associated with changes to the Stable Standards. 62 FR 31202–31207.

EPA is proposing to make a few minor changes to the provisions for opt-outs based on a change to a Stable Standard. Under the Final Framework Rule, a manufacturer cannot opt out of National LEV based on a change to a Stable Standard unless the manufacturer has provided a written comment during the rulemaking on that change stating that it is sufficient to trigger a National LEV offramp. If EPA went ahead and made the change despite the objection, manufacturers generally would have to decide whether to exercise their opt-out option within 180 days of the occurrence of the condition triggering opt-out. EPA usually consults extensively with manufacturers regarding contemplated changes to the technical motor vehicle requirements to get information on the manufacturers' views regarding the feasibility and effectiveness of different requirements. Also, manufacturers have the opportunity during the comment period to alert EPA to any changes that manufacturers believe may be sufficient to provide an offramp. Thus, EPA is highly unlikely to make any change to a Stable Standard that may allow the manufacturers to opt-out without being aware of that potential and without carefully weighing the emissions benefits of the change relative to the emissions benefits of assuring the continuation of National LEV.

Nevertheless, in the final rule, EPA provided an additional protection to ensure that a change to a Stable Standard did not inadvertently provide an offramp. EPA has an opportunity to prevent an opt-out based on a change to a Stable Standard from coming into effect by withdrawing the change to the Stable Standard before the effective date

[35] See 40 CFR 86.079–32, 86.079–33, and 86.082–34.

[36] EPA is considering making significant changes to its existing federal compliance program, currently targeted to begin with MY2000 (these changes are referred to as CAP 2000, or Compliance Assurance Program 2000). While CAP 2000 is still pre-proposal, EPA has established a docket (A–96–50), which contains information on the concepts currently being considered. Once promulgated, CAP 2000 may have some potential ramifications for quickly changing certification designations for National LEV vehicles sold in an OTC State that had violated its National LEV commitment. In particular, EPA is considering significantly streamlining its current certification program and requiring manufacturers to perform an in-use verification testing program to demonstrate that the streamlined certification procedures are capable of predicting in-use compliance. This program would apply to all federally certified vehicles, including Tier 1 vehicles. Thus, CAP 2000 could also possibly apply to any National LEV vehicles that were only required to comply with Tier 1 tailpipe standards under the proposal outlined above.

of the opt-out. In addition, to make EPA's ability to cure the offramp effective, the final rule delays the earliest possible effective date of an opt-out based on a change to a Core Stable Standard. Such an opt-out could not become effective until the model year named for the second calendar year following the calendar year in which the manufacturer opted out.

EPA is proposing to delete the provisions allowing the Agency the ability to cure under these circumstances, and is proposing to set the earliest effective date of an opt-out based on a change to a Core Stable Standard to be the same as the earliest effective date of an opt-out based on a violation of an OTC State commitment to National LEV. Thus, an opt-out based on an EPA change to a Core Stable Standard or an OTC State violation of its commitment to National LEV could become effective beginning in the ''next model year.'' [37] See section VI.A above for further discussion of the effective date of opt-outs based on an OTC State violation of its commitment to National LEV.

EPA believes that providing the Agency a formal opportunity to cure a change to a Stable Standard adds unnecessary complexity to the program. Also, if an offramp were triggered, EPA's ability to cure extends the period of uncertainty as to whether National LEV would remain in effect, which is a destabilizing influence on the program. EPA believes it is highly unlikely that the Agency would change a Stable Standard so as to trigger an offramp. Nevertheless, in the hypothetical situation where one of those conditions triggering an offramp occurred, EPA believes that it would be in all of the parties' best interests to know as soon as possible whether any manufacturer intended to opt-out, and if so, when that opt-out would become effective. Adding yet another layer of complexity to the opt-out provisions undermines that goal.

In the Final Framework Rule, EPA stated that, if a manufacturer were to take an offramp because EPA changed a Stable Standard, the applicable state or federal standards would apply. At that time, EPA did not discuss in detail the timing for when state or federal standards would apply. Today EPA is proposing that, if a manufacturer validly opted out of National LEV based on an EPA change to a Stable Standard, once the manufacturer's opt out was effective, the manufacturer's obligations would be determined the same as if the manufacturer had opted out because an OTC State failed to submit its National LEV SIP revision on time (except that no state could be treated as a violating state). The manufacturer would be subject to any backstop Section 177 Programs for which the two-year lead time requirement of section 177 had been met (running from the date the state adopted the backstop program), or would be subject to Tier 1 requirements in states without such programs. Manufacturers would be subject to backstop ZEV mandates once the two-year lead time set forth in section 177 had passed (running from the date of the manufacturer's opt-out notification). To the extent that these regulations would provide a manufacturer with less than the two-year lead time set forth in section 177, the manufacturer waives that protection by opting into National LEV and then setting an effective date in its opt-out notification that provides for less than two-years lead time.

E. Nationwide Trading Region

The National LEV program, as initially proposed and as set forth in the Final Framework Rule, requires manufacturers to determine compliance with the fleet average NMOG standards for the two classes of National LEV vehicles in two separate trading regions: The OTC States and the 37 States making up the rest of the country (except California). Credits and debits generated under the program are specific to the region of creation.

Several factors led the parties to support and EPA to establish separate trading regions in the Final Framework Rule. In part, the two regions were set up because the National LEV program starts in the OTR before it applies in the rest of the country. Additionally, at the time the two regions were proposed, the separate regions were designed in part to meet the OTC States' legal obligations under the OTC LEV SIP call. The OTC States were concerned that manufacturers would provide a different, higher emitting mix of vehicles in the OTR than they would in the 37 States region if they were allowed to average their vehicle sales over a nationwide region. Also, to ensure that the OTC States would receive the intended benefit of the program's earlier start in the OTR, the separate trading regions facilitated the offset of debits generated in the OTR through vehicle introductions or credits earned in the OTR.

The elimination of the legal requirement to have National LEV provide equivalent emission reductions to the OTC LEV program and the change in program start dates for both National LEV and OTC State Section 177 Programs allows EPA to reconsider the necessity of establishing separate trading regions.[38] As a result of the court decision, EPA no longer is required to demonstrate that National LEV provides emission reductions at least equivalent to those from the OTC LEV program. The main purposes in having two separate trading regions were to ensure that the manufacturers meet certain fleet average NMOG standards in the OTR for purposes of the equivalency requirement and to provide the actual emissions reductions in the OTR that the OTC States would expect to receive upon opting into National LEV. The absence of the legal requirement to find equivalency means that separate trading regions are not necessary to demonstrate that National LEV will achieve emissions reductions in the OTR at the level that would be provided by compliance with the fleet average NMOG requirements in the OTR alone. Additionally, in comparison to individual OTC State adopted Section 177 Programs, National LEV starting in MY1999 provides greater emission reductions in the OTR. Thus, EPA does not believe that two trading regions are necessary to achieve the actual emissions reductions expected in the OTR under National LEV. Finally, EPA believes that even with one trading region, manufacturers' fleets in the OTR will comply with the fleet average NMOG standards, as discussed below.

EPA is proposing to establish a nationwide trading region (not including California), starting in MY2001. For MY1999 and MY2000, manufacturers will have to demonstrate compliance with National LEV standards only in the OTR. For MY2001 and later, when the program is introduced nationwide, EPA is proposing that there be one compliance region. EPA believes this will not detrimentally affect the environmental benefits of National LEV in the OTR and will reduce manufacturers' and EPA's administrative burden in demonstrating compliance with the National LEV fleet average NMOG standards. A discrepancy between the fleet sold in the OTR and outside the OTR would only be possible if a manufacturer's fleet was made up of a number of engine families certified to Tier 1, TLEV, and LEV standards and vehicle buying patterns differed significantly between

[37] The ''next model year'' is the model year named for the calendar year following the calendar year in which the event allowing opt-out occurred.

[38] EPA could have reconsidered the need for two separate trading regions prior to promulgating the Final Framework Rule, but it did not do so. EPA thought it best to take comment on combining the two trading regions before doing so.

the Northeast states and other regions of the country. EPA does not believe that vehicle sales patterns of the relevant vehicles will differ dramatically between the two regions. Moreover, for there to be even a possibility of introducing a greater percentage of dirtier vehicles in the OTR than in the rest of the country, a manufacturer's fleet after MY2000 would have to include Tier 1 vehicles and TLEVs, as well as LEVs. EPA does not believe significant numbers of Tier 1 vehicles and TLEVs will be sold in the OTR after MY2000, since other provisions of the National LEV program will act to reduce the incentive to sell substantial numbers of such vehicles at that time. Beginning in MY2001, National LEV regulations prohibit manufacturers from offering for sale any Tier 1 vehicles and TLEVs in the NTR unless the same engine families are certified and offered for sale in California in the same model year. See 62 FR 31218 (June 6, 1997).[39] California's more stringent fleet average NMOG standard and SFTP phase-in requirements, as described in section IX, will act to limit the number of Tier 1 and TLEV engine families certified and sold in California, and, therefore, the number sold in the NTR.

Additionally, even though the National LEV fleet average NMOG standard is not as stringent as California's, the 0.075 g/mi and 0.100 g/mi standards applicable for MY2001 and later will make it difficult for manufacturers to include substantial numbers of Tier 1 vehicles and TLEVs in their fleet and still comply with the National LEV NMOG fleet average standard. For example, manufacturers would have to build five ULEVs for every one Tier 1 vehicle produced, and approximately three ULEVs for every two TLEVs produced, to comply with the 0.075 g/mi fleet average NMOG standard. Therefore, EPA believes there are strong incentives for manufacturers to limit or even eliminate the production and sale of Tier 1 vehicles and TLEVs in the NTR in MY2001 and later, which would result in a nationwide vehicle fleet of essentially LEVs.

Compliance under one nationwide trading region versus two separate regions for MY2001 and later model years will reduce the manufacturers' compliance burden by eliminating the need to specifically track vehicle sales to two separate regions and maintain two separate tallies of credits and debits specific to the two regions. A single trading region will also reduce EPA's administrative burden in determining whether manufacturers are complying with the applicable fleet average NMOG standards. Given a nationwide fleet that is all or almost all LEVs, a separate trading region for the OTR would not have any significant air quality benefit and would add additional unnecessary complexity to the National LEV program.

Under today's proposal, National LEV would continue to include the NTR, which would apply for MY1999–2000 and cover vehicles sold in the OTC States. The second region would be the All States Trading Region (ASTR), which would include all states in National LEV except for California, and apply for 2001 and later model years. Manufacturers would demonstrate compliance with the fleet average NMOG standards in these two regions under the provisions set forth in the Final Framework Rule. EPA is proposing to delete the 37 State trading region that was finalized in the Final Framework Rule.

The National LEV regulations would still need to address how to treat credits and debits generated before MY2001. EPA is proposing that manufacturers could continue to generate early reduction credits in the states outside the NTR before MY2001 to apply to the ASTR from MY2001 on. Manufacturers could also use credits generated in the NTR for demonstrating compliance in the ASTR from MY2001 on at the same value as if the manufacturer had used them in the NTR under the Final Framework Rule. However, EPA is proposing that a manufacturer could not apply early reduction credits generated outside the NTR to offset any debits generated in the NTR before MY2001. Using credits generated outside the NTR to offset debits generated in the NTR during MY1999 and MY2000 would decrease the environmental benefits that should accrue to the NTR. EPA is taking comment on two possible methods to ensure that any debits in the NTR from MY1999 or MY2000 are made up in the NTR. One possibility is for EPA to require compliance with fleet average NMOG standards in the NTR and the 37 States after MY2000 if a manufacturer has outstanding debits in the NTR after calculating its compliance with the MY2000 fleet average NMOG standards for the Class A and B vehicle categories. Such a manufacturer would be required to meet separate fleet average NMOG standards in the OTR and 37 States until the model year following the model year for which it has eliminated the outstanding debits. Another possibility is that an All States Trading Region would start for all manufacturers in MY2001. A manufacturer with debits in the NTR after MY2000, however, would be required to make up those debits in the NTR. Unless a manufacturer bought NTR-specific credits, sufficient to offset its NTR debit on a timely basis, the manufacturer would need to calculate an NTR NMOG average for MY2001 and apply any NTR-specific credits to its NTR debits. Under no circumstance could credits outside the NTR be used to offset NTR debits from MY2000 or MY1999.

EPA is also taking comment on allowing a manufacturer to demonstrate compliance with the fleet average NMOG standards using actual production data in lieu of actual sales data if the manufacturer is demonstrating compliance with the fleet average NMOG standards in the ASTR. In the Final Framework Rule, EPA included regulations allowing manufacturers to use production data in lieu of sales data if a manufacturer's entire fleet, apart from California, was certified to LEV or cleaner standards. EPA was concerned about allowing the use of production data without these restrictions because of the need to demonstrate compliance in two separate trading regions. However, if EPA establishes a nationwide trading region, EPA is taking comment on allowing manufacturers to demonstrate compliance using production date rather than sales date, even if the manufacturer's fleet is not all LEV or cleaner vehicles. A manufacturer would need to petition EPA to allow production volume to be used in lieu of actual sales volume and would have to submit the petition to EPA within 30 days after the end of the model year. EPA would grant such petition if the manufacturer establishes, to the satisfaction of the Administrator, that production volume is functionally equivalent to sales volume. Manufacturers would still have to keep sales data in the NTR to demonstrate compliance with the ban on the sale of Tier 1 and TLEV engine families if such engine families are not certified for sale

[39] To meet this requirement, manufacturers will not be required always to sell exactly the same engine families in both California and the NTR because in some instances, that would not be possible. In the specific case of Tier 1 engine families, National LEV maintains Federal Tier 1 standards while California has its own Tier 1 standards, so a manufacturer could not sell an identical California Tier 1 vehicle as a Federal Tier 1 vehicle in the NTR under the National LEV program. Therefore, for purposes of this provision, EPA will consider a National LEV Tier 1 or TLEV engine family the same as a California Tier 1 or TLEV engine family if the National LEV engine family has the same technology (hardware and software) as the comparable California engine family. A manufacturer could always certify a Tier 1 or TLEV engine family as a 50-state family and avoid this issue.

in California for the same model year. EPA has previously allowed manufacturers to use production volume in lieu of sales volume as part of the Tier 1 standards phase-in.

F. Elimination of Five-Percent Cap on Sales of Tier 1 Vehicles and TLEVs in the OTR

EPA's Final Framework Rule codified the OTC States' and manufacturers' recommendation that National LEV include provisions limiting the sale of Tier 1 vehicles and TLEVs in the NTR after MY2000. The first provision is that manufacturers may sell in the NTR Tier 1 vehicles and TLEVs only if the same or similar engine families are certified and offered for sale in California as Tier 1 vehicles and TLEVs. See section VIII.E above for further discussion on this provision. The second provision is a five-percent cap on sales of Tier 1 vehicles and TLEVs in the NTR starting in MY2001, which allows all manufacturers to sell Tier 1 vehicles and TLEVs in the NTR to the extent permitted under the first limitation as long as the overall Tier 1 vehicle and TLEV fleet does not exceed five percent of the National LEV vehicles sold in the NTR. EPA is proposing to delete the five-percent cap provision. The parties originally developed this provision to address OTC States' concerns that National LEV could have a disproportionate effect on NO_X emissions when compared to OTC state-by-state adoption of Section 177 Programs. See 62 FR 31217. EPA is now proposing to delete this provision because of the change in the OTC States' legal obligation since this provision was proposed and because of the additional administrative burden it would entail if EPA were to adopt today's proposal to have a single trading region starting in MY2001. Furthermore, EPA believes the five-percent cap would not provide any air quality benefit given the expected fleet make-up after MY2000 and the other limitation on sales of these vehicles in the NTR.

First, the court reversal of the requirement that all OTC States adopt Section 177 Programs effective in MY1999, means there is no longer a legal requirement that EPA find that National LEV is equivalent to state Section 177 Programs throughout the OTR. Additionally, as discussed above (see section IV comparing NLEV and OTC LEV emissions reductions), the expected benefits in the OTR of National LEV as compared to OTC State adopted Section 177 Programs has increased. Therefore, there is no legal need and less practical need for a five-percent cap to control NO_X emissions.

Second, EPA believes the five percent cap is not necessary because it expects manufacturers will not introduce significant numbers of Tier 1 vehicles and TLEVs after MY2000 in the national, let alone the Northeast, market. See section VIII.E above for EPA's rationale for this belief. This means that National LEV will not have a NO_X penalty when compared to OTC State adopted Section 177 Programs. A National LEV fleet, made up primarily of LEV vehicles, will have similar effects on NO_X emissions when compared to a CAL LEV fleet consisting primarily of LEV and ULEV vehicles since both types of vehicles have the same NO_X emission standards. EPA believes that any sales of Tier 1 vehicles and TLEVs in the NTR after MY2000 will make up less than five percent of the fleet in any instance, and does not believe having a separate program to ensure such sales limits is needed.

Finally, even if there were some benefit to the NTR from a five-percent cap, EPA believes the benefit would be so minimal (at best) that it would not justify the administrative burden given EPA's proposal for one trading region after MY2000. Under EPA's proposal for an All State Trading Region for 2001 and later model years and the proposal to allow manufacturers to demonstrate compliance through production data, manufacturers would not need to report state-specific sales data, except to demonstrate compliance with the five-percent cap.

G. Technical Corrections to Final Framework Rule

The Agency is also proposing today to make several minor technical corrections to the National LEV regulations issued in the Final Framework Rule. As already noted, a number of changes must be made to reflect the proposed start of the program in the 1999 model year, rather than the 1997 model year as was used as a placeholder in the June 6 Final Framework Rule. In addition, EPA is aware of several other errors and omissions that require correction, and is continuing to evaluate the regulations to determine the need for additional such corrections. Errors and omissions identified to date include a missing ''0–3750'' in the Loaded Vehicle Weight column of Table R97–8 (62 FR 31249), and incorrect full useful life in-use formaldehyde (HCHO) standards for LEVs and ULEVs for light light-duty trucks of 3751–5750 lbs loaded vehicle weight in Table R97–13 (62 FR 31250). In the latter case, the LEV and ULEV standards were reported as 0.018 and 0.014 grams per mile, respectively, when in fact they should have been 0.023 and 0.013 grams per mile, respectively. EPA is not including proposed regulatory text for these changes with today's action, but anticipates making these and similar minor corrections with the finalization of today's proposal later this year. In addition, a June 24, 1997 letter from the American Automobile Manufacturers Association (AAMA) and Association of International Automobile Manufacturers (AIAM) (available in the public docket for review) suggests numerous other technical corrections to the regulations EPA promulgated on June 6, 1997. The technical corrections detailed by AAMA/AIAM will be reviewed by EPA, and to the extent that they are necessary and appropriate they will be implemented when this rulemaking is finalized later this year.

In the Final Framework Rule, EPA required manufacturers to track vehicles to the ''point of first sale'' for purposes of determining compliance with fleet average NMOG standards. See 62 FR 31212. EPA defined ''point of first sale'' as ''the location where the completed LDV or LDT is purchased'' and it ''may be a retail customer, dealer, or secondary manufacturer.'' See 40 CFR 86.1702–97(b). EPA recognized that requiring manufacturers to always track vehicle sales to the ultimate purchaser would add an additional burden on manufacturers without having any significant effect on air quality.

Requiring manufacturers to track vehicles to the point of first sale was intended to impose similar requirements on manufacturers as those associated with EPA's Tier 1 standard phase-in compliance requirements found in 40 CFR 86.094–8 and 86.094–9. In the Tier 1 program, manufacturers could demonstrate compliance ''based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.'' See 40 CFR 86.094–8(a)(1)(i)(B)(*1*)(*i*). EPA believes the National LEV vehicle sales tracking requirements operate in the same manner as those found in the Tier 1 regulations, but the auto manufacturers have notified EPA of their concern that National LEV imposes different requirements. (Document available in docket A–95–26.)

To eliminate confusion about the required level of vehicle tracking necessary to demonstrate compliance with National LEV fleet average NMOG standards, EPA is proposing to modify the definition of ''point of first sale'' in the National LEV program to include the ''point of first sale'' language found in

the Tier 1 regulations. EPA did not intend to limit ''point of first sale'' entities to those specifically listed in the National LEV regulations. EPA also does not intend to limit a manufacturer to tracking vehicles only to the point of first sale if a manufacturer decides further tracking gives it a more accurate account of vehicle sales in the different trading regions or its current vehicle tracking system is set up to track vehicles beyond the point of first sale. However, as noted in the Final Framework Rule, EPA does not believe this additional level of tracking vehicles is necessary.

IX. Supplemental Federal Test Procedure

A. Background

The Federal Test Procedure (FTP) is the vehicle test procedure historically used by EPA and the California Air Resources Board (CARB) to determine the compliance of light-duty vehicles and light-duty trucks with the conventional or ''on-cycle'' exhaust emission standards. Using the FTP, emissions performance is tested while the vehicle is driven over a ''typical'' driving schedule, using a dynamometer to simulate the vehicle-to-road interface. Pursuant to the requirements of section 206(h) of the CAA, EPA recently promulgated revisions to the Federal Test Procedure to make the test procedure better represent the manner in which vehicles are actually driven (61 FR 54852, October 22, 1996). The primary new element of the revisions was the addition of a Supplemental Federal Test Procedure (SFTP) with accompanying emission standards designed to address shortcomings of the conventional FTP in the representation of aggressive driving behavior, rapid speed fluctuations, driving behavior following startup, and use of air conditioning. In addition, a new set of requirements designed to more accurately reflect real road forces on the test dynamometer affects both the SFTP and the preexisting conventional FTP. Absent any modifications that might result due to implementation of the National LEV Program, these new requirements are to be phased in, applying to 40 percent of a manufacturer's fleet of light-duty vehicles and light light-duty trucks in MY2000, 80 percent in MY2001, and 100 percent in MY2002. A similar phase-in schedule for heavy LDTs begins in MY2002. The SFTP emission standards promulgated by EPA are appropriate for vehicles meeting the so-called ''Tier 1'' on-cycle emission standards; EPA did not propose LEV-stringency off-cycle standards as part of its FTP revisions or as part of an earlier National LEV rulemaking.

EPA and CARB coordinated closely their review of the FTP, their research efforts, and the development of their respective off-cycle policies. On April 23, 1997, CARB published a proposal detailing their approach to addressing off-cycle emissions in the State of California.[40] Following a comment period that remained open through May 6, 1997, CARB released a notice of public hearing accompanied by a staff report regarding its proposed adoption of SFTP test procedures and standards (''Staff Report'').[41] The proposal has four basic elements to it: test procedures, emission standards for LEVs and ULEVs, emission standards for Tier 1 vehicles and TLEVs, and a phase-in schedule. CARB adopted SFTP requirements largely consistent with their proposal at a public hearing on July 24, 1997. Any additional minor changes that arise in subsequent stages of CARB's regulatory process will be addressed in the National LEV supplemental final rule.

EPA stated in the National LEV Final Framework Rule its intent to harmonize the SFTP requirements of the National LEV program with California once California completes the adoption of such requirements under its LEV program. Given that the finalization of today's proposal will occur sometime after the CARB public hearing, EPA is optimistic that the timing will allow the CARB and National LEV SFTP programs to be largely harmonized with the completion of the supplemental final National LEV rulemaking initiated by today's proposal. However, pending completion of that harmonization, the federal SFTP requirements that have already been promulgated are the default requirements for vehicles in the National LEV program. In today's notice, as further described below, EPA is proposing to adopt the CARB SFTP substantially as outlined by CARB in its June 6, 1997 Staff Report and as adopted at their July 24, 1997 public hearing.[42]

B. Elements of the CARB Proposal and Applicability Under National LEV

1. Test Procedure

CARB adopted high speed, high acceleration, and air conditioner supplemental test procedures that are in all respects identical to the procedures adopted by EPA. EPA anticipates that the remaining CARB rulemaking process is highly unlikely to make any changes to the test procedure elements, and that

[40] Draft Regulatory Measure to Control Emissions During Non-Federal Test Procedure Driving Conditions From Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles Under 8,500 Pounds Gross Vehicle Weight Rating, Mail-Out #MSC 97–06, April 23, 1997. Available in the public docket for review, and also at http://arbis.arb.ca.gov/msprog/macmail/macmail.htm.

[41] Notice of Public Hearing to Consider Adoption of New Certification Tests and Standards to Control Emissions from Aggressive Driving and Air-Conditioner Usage for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles Under 8,501 Pounds Gross Vehicle Weight Rating, Mail Out #97–13, May 27, 1997. Available in the public docket for review, and also at http://arbis.arb.ca.gov/msprog/macmail/macmail.htm#msc9713.

[42] An additional issue arises if for some reason it becomes impossible, impractical, or undesirable for the National LEV program to harmonize with the CARB SFTP requirements. As the Agency recognized in the October 22, 1996 final rule promulgating the SFTP, the phase-in schedule of the new standards and test procedures contained in that rule ''could create an additional burden for auto manufacturers if the [National LEV] Program goes into effect as proposed with a MY2001 implementation nationwide'' (61 FR 54854). As noted above, the new SFTP requirements, which are of a Tier 1 level of stringency, start phasing in with MY2000. In that model year, if the National LEV Program is in effect, vehicles in the OTR will be a mixture of TLEVs, LEVs, and ULEVs that is driven by the National LEV fleet average NMOG requirements. Outside the OTR, however, many MY2000 vehicles are expected to be Tier 1 technology vehicles (except for possibly in some of the states bordering OTC States), which would be the applicable set of emission standards in that model year. A minimum of forty percent of a manufacturer's nationwide fleet would be required to meet the SFTP emission standards. However, if the National LEV Program continues in effect, the program would transition to a nationwide program with MY2001. In that model year the fleet average NMOG standard would be 0.075 grams/mile-equivalent to a fleet of 100 percent LEVs. The effect of the nationwide implementation of National LEV at this fleet average level would be essentially to make Tier 1 vehicles obsolete. In MY2001 a minimum of eighty percent of a manufacturer's fleet must meet the new federal SFTP standards. Under such a scenario, the auto manufacturers would have to invest in bringing a number of Tier 1 engine families into compliance with the federal SFTP standards for MY2000 only to transition to a fleet of LEVs in the following model year. EPA believes that the environmental benefit of this investment would be minimal, and the costs to industry would be considerable. Consequently, under the scenario where the CARB SFTP does not apply to National LEV vehicles and the default federal requirements apply, EPA does not believe it is practical or necessary to hold manufacturers to the 40 percent phase-in in MY2000 if the affected vehicles are essentially phased out in the following model year. However, EPA does not view a shifting of the entire phase-in schedule forward by a model year (e.g., the 40 percent requirement would apply in MY2001) as a necessary or desirable solution to the problem. Instead, EPA is proposing to waive the MY2000 requirement, but continue the existing phase-in with the existing MY2001 and MY2002 requirements. While EPA proposes this as a resolution to an issue that arises under a specific scenario, this is not addressed in the proposed regulatory text; which assumes successful harmonization with the CARB SFTP requirements (making such an adjustment to the phase-in of the federal requirements moot, as described below). Furthermore, this proposal would only apply if National LEV is in effect. If National LEV does not come into effect, the current phase-in schedule would continue to apply.

their final rule will maintain complete harmonization in this regard. The two agencies cooperated closely in the development of the driving schedules and testing protocols and placed significant emphasis on total alignment throughout the development process. Therefore, EPA proposes that the SFTP test procedures for all vehicles covered by National LEV would be those currently contained in federal regulations (40 CFR 86.158, 86.159, 86.160, 86.161, 86.162, 86. 163, and 86.164).

2. Emission Standards

California adopted two sets of emission standards, one applicable to LEVs, ULEVs, and super ULEVs (SULEVs), and the other applicable to Tier 1 vehicles and TLEVs. However, the only SULEVs in CARB's regulations are in their Medium-Duty Vehicle category, a class of vehicles not covered by the National LEV Program, and consequently not covered in the following discussion of emission standards or in today's proposed regulations.

a. LEVs and ULEVs. For each of the affected vehicle weight categories, CARB adopted a set of SFTP certification standards that applies to LEVs and ULEVs (see Table 1). Due to limited data on emissions and appropriate reactivity adjustment factors, CARB exempted alternative fuel vehicles from these standards, applying them only to gasoline, diesel, and fuel-flexible vehicles while operating on gasoline or diesel fuel. These standards would only apply at 4,000 miles, a significant departure from EPA's traditional method of standard setting. These standards have already received the support of the auto industry. In conjunction with the low-mileage standards, CARB maintains that there be no in-use vehicle compliance requirements (recall testing) for SFTP standards, which CARB admits raises the issue of the adequacy of controls on in-use emissions. Although CARB believes that in-use testing based on the preexisting conventional FTP, combined with the efficacy of On-Board Diagnostics II (OBD II) systems, is likely to capture emissions increases occurring under off-cycle conditions, they recognize the risk that ''in-use vehicles may show [off-cycle] emission deterioration not paralleled by deterioration over the FTP.'' Because of this, CARB plans to assess in-use off-cycle emissions and implement 50,000-mile and 100,000-mile standards if necessary, although they have committed to maintaining stability in the standards through the phase-in period.

TABLE 2.—PROPOSED US06 AND SC03 4,000 MILE CERTIFICATION STANDARDS FOR LEVS AND ULEVS

Vehicle type	Loaded vehicle weight (lbs.)	US06 (g/mi)		SC03 (g/mi)	
		NMHC+NOX	CO	NMHC+NOX	CO
LDV	All	0.14	8.0	0.20	2.7
LDT	0–3,750	0.14	8.0	0.20	2.7
	3,751–5,750	0.25	10.5	0.27	3.5

EPA is proposing today to adopt the standards shown in Table 1 as the SFTP standards applicable to LEVs and ULEVs covered under the National LEV Program. These standards will be applied to the National LEV Program in the same manner as adopted by CARB, in that they apply at 4,000 miles and there will be no in-use enforcement to these SFTP standards for LEVs and ULEVs.

Although the low-mileage approach to standard-setting is unconventional, EPA believes that the incorporation of the above standards into the NLEV program can be justified technically, environmentally, and legally. The National LEV provisions are structured to ensure that vehicles certified under National LEV will continue to meet all of the federal requirements for Tier 1 vehicles and hence meet the minimum requirements under the Act, in addition to the more stringent National LEV requirements. Section 202(a) of the Act requires motor vehicle standards to apply for the full useful life of the vehicle, which is 100,000 miles, pursuant to section 202(d). The Tier 1 standards, both FTP and SFTP, apply to federal Tier 1 vehicles at 50,000 miles and 100,000 miles. Thus, the statute requires that National LEV LEVs and ULEVs also meet the Tier 1 SFTP requirements at 50,000 and 100,000 miles.

EPA carefully assessed the level of the standards adopted by CARB for LEVs and ULEVs, and found that they are of a sufficient stringency to provide emission reductions significantly greater than those that would be achieved by applying full useful life Tier 1 SFTP standards to LEVs and ULEVs. Moreover, for LEVs and ULEVs the full useful life National LEV FTP standards should prevent deterioration of the same types of systems that control emissions over the SFTP cycles. Therefore, the combination of the stringent SFTP 4,000 mile standard and the full useful life LEV and ULEV FTP standards provides considerable confidence that these vehicles will be certified at a low emission level and will not deteriorate during their useful life to a point where they may be emitting above the Tier 1 100,000 mile SFTP levels.

While EPA is confident that the combination of requirements applicable to LEVs and ULEVs means that they would not emit above the Tier 1 100,000 mile SFTP levels, manufacturers are concerned that structuring the regulations to apply the Tier 1 100,000 mile SFTP standards to LEVs and ULEVs would impose a substantial additional burden on the manufacturers for no environmental benefit. If EPA were to apply the full useful life Tier 1 100,000 mile SFTP standards to LEVs and ULEVs, manufacturers would need to conduct additional testing for each manufacturer to ensure compliance with such standards. While manufacturers share EPA's confidence that the vehicles will meet the full useful life Tier 1 SFTP standards, nonetheless manufacturers have stated that they would have to conduct full useful life SFTP tests to protect against any possibility of enforcement liability. Alternatively, manufacturers might choose not to opt into the National LEV program. In either case, manufacturers would incur substantial additional burdens.

In light of these factual determinations, EPA believes that a de minimis exemption to the statutory requirements is appropriate here, which would allow EPA to set SFTP standards for LEVs and ULEVs at 4,000 miles only. In a situation such as this where Congress has not drafted a statute so rigidly as to preclude a de minimis exemption, the courts have held that agencies have implied authority to craft a de minimis exemption from a statutory provision ''when the burdens

of regulation yield a gain of trivial or no value.'' See *EDF* v. *EPA*, 82 F.3d 451 (DC Cir. 1996); *Alabama Power* v. *Costle*, 636 F.2d 323 (DC Cir. 1979). EPA believes that applying the Tier 1 level stringency 50,000 and 100,000 mile SFTP standards to LEVs and ULEVs would produce no or trivial additional environmental benefit because EPA is confident the vehicles would meet those emissions levels even in the absence of enforceable standards. Such standards would also impose substantial additional costs on manufacturers. Consequently, EPA believes a de minimis exemption from the statutory requirement to set full useful life SFTP standards for LEVs and ULEVs under National LEV is appropriate here.

b. Tier 1 Vehicles and TLEVs. Because the extensive test programs culminating in CARB's development of SFTP standards focused on developing standards for LEVs and ULEVs, CARB proposed to apply to Tier 1 vehicles and TLEVs standards identical to those promulgated by EPA for Tier 1 vehicles. As under the federal regulations, these standards would apply at 50,000 and 100,000 miles, and vehicles certifying to these standards would face an in-use compliance requirement. Additionally, CARB also proposed to maintain EPA's higher NMHC+NO_X standard for diesel vehicles, as well as EPA's exemption of alternative fuel Tier 1 vehicles and TLEVs from compliance with the SFTP standards.

CARB's treatment of Tier 1 vehicles and TLEVs, however, remains an issue of some controversy. Auto manufacturers have approached CARB staff and requested consideration of 4,000-mile standards for Tier 1 vehicles and TLEVs, which would align the certification requirements of these vehicles with the requirements that apply to LEVs and ULEVs. The methodology suggested by the auto manufacturers for establishing 4,000-mile standards for Tier 1 vehicles and TLEVs is to increase the proposed LEV SFTP emission standards (Table 1) by the ratio of Tier 1 to LEV emission standards applicable to the conventional FTP. EPA supports the current CARB proposal, in that it maintains what EPA strongly believes are appropriate standards for Tier 1 vehicles. CARB pursued low-mileage standards for LEVs and ULEVs for several reasons, but largely because the value of the data they had collected at high mileage for standard-setting became questionable. EPA did not face similar problems with standard-setting, and was able to establish 50,000-mile and 100,000-mile standards that are well-justified and appropriate for Tier 1 vehicles. It has been EPA's experience with pre-LEV technologies that full useful life standards with in-use recall liability are important for ensuring clean and durable vehicles. In addition, part of the justification for providing a de minimis exemption for LEVs and ULEVs from the statutory requirement that the Tier 1 requirements apply for the full useful life of these vehicles is that the LEV and ULEV 4,000 mile standards are significantly more stringent than Tier 1 standards, so the vehicles would have to deteriorate drastically to exceed the full useful life Tier 1 standards in use. This argument would not apply to Tier 1 vehicles with 4,000 mile standards calculated as the manufacturers have suggested. Consequently, today's notice proposes that the NLEV program adopt CARB's proposed treatment of Tier 1 vehicles and TLEVs.

3. Implementation Schedule

As noted earlier, EPA's SFTP requirements applicable to Tier 1 vehicles would begin to phase in with the 2000 model year, achieving 100 percent compliance in the 2002 model year. The implementation schedule proposed by CARB is somewhat different, in that it starts later and extends for four years. CARB initially considered maintaining the federal phase-in rate for Tier 1 vehicles and TLEVs, while subjecting LEVs and ULEVs to the longer and later schedule, but elected instead to propose phasing in all vehicle emission categories at the same rate. Although Tier 1 vehicles and TLEVs are certified to standards of different stringency than LEVs and ULEVs, CARB proposed to allow the number of vehicles from both groups to be combined for the purpose of determining compliance with the phase-in schedule. CARB proposed this approach because of the concern that, if a separate phase-in schedule was maintained for Tier 1 vehicles and TLEVs, manufacturers would have to dedicate resources to making Tier 1 vehicles SFTP-compliant when the rest of the California LEV program is causing Tier 1 vehicles to phase out in the fairly short term. In their Staff Report, CARB acknowledges that Tier 1 vehicles and TLEVs will be phasing out due to the decreasing NMOG fleet average requirements and they specifically structure their SFTP program to allow these vehicles time to phase out without having to comply with SFTP standards. CARB prefers to allow manufacturers to focus efforts on development of LEVs and ULEVs that comply with LEV/ULEV SFTP standards, which will be the predominant vehicles in California, rather than expend effort on vehicles that will be phasing out in California in the time frame of their proposed SFTP phase-in. While allowing Tier 1 vehicles an adequate opportunity to phase out, CARB also ensures an adequate phase-in of LEVs and ULEVs complying with the SFTP be ensured. They achieve this by requiring that the percentage of LEVs and ULEVs meeting the SFTP requirements also meet the required phase-in schedule. This implies that meeting the phase-in percentage with the subset of the fleet made up of LEVs and ULEVs will also meet the overall phase-in requirement *if* a manufacturer has no Tier 1 vehicles or TLEVs. If a manufacturer does have some Tier 1 or TLEV engine families, it would have the choice of making some proportion of those vehicles SFTP-compliant or expending some effort phasing in additional LEV or ULEV engine families in order to maintain compliance with the phase-in requirements.

To provide some additional flexibility, CARB proposed a concept of equivalent phase-in schedules, which would be allowed in place of the required phase-in schedule. This approach allows manufacturers to use an alternative phase-in schedule providing that the alternative measures up to the required schedule according to a set methodology. The equivalent phase-in methodology calculates credits by weighting the required phase-in percentages in each model year of the phase-in schedule by the number of model years prior to and including the last model year of the scheduled phase-in, then summing these credits over the phase-in period. These ''credits'' are calculated for the required phase-in schedule, and any alternative phase-in that results in an equal or larger cumulative total number of credits by the end of the last model year of the scheduled phase-in is acceptable. For example, in the case of the CARB proposed phase-in, the required ''credits'' are: (25% * 4 years)+(50% * 3 years)+(85% * 2 years)+(100% * 1 year)=520. This allows manufacturers some additional flexibility while ensuring no loss in overall emissions over the phase-in schedule. Additionally, using this methodology, manufacturers can gain credits towards their phase-in through early introductions of vehicles meeting the applicable requirement even prior to the beginning of the required phase-in (e.g., 10 percent compliance five years before full phase-in gains 50 ''points'' towards the total required). Regardless of the number of ''points'' earned by a given alternative schedule, phase-in of 100% must be achieved in the required final

year of the phase-in. EPA proposes to adopt this proposal, with the additions noted below.

It is not entirely clear from the CARB Staff Report what enforcement mechanism will apply to the proposed allowance for an alternative phase-in. However, EPA believes that allowing the alternative phase-in approach requires that it be accompanied by an appropriate enforcement mechanism. Although it is possible that a manufacturer could reach the next-to-last year of the phase-in and realize that there is no way to achieve the desired credits, EPA believes that manufacturers would not plan this phase-in on a year-by-year basis, but rather would determine a specific schedule prior to implementation that integrates the phase-in with the product planning cycle and that would enable manufacturers to achieve the required points with an adequate margin of safety. In the event that a manufacturer does not attain the required number of phase-in credits, EPA proposes that enforcement will be much like the current enforcement provisions regarding non-compliance with a phase-in schedule. Specifically, failure to attain the required credits will be regarded as a failure to satisfy the conditions on which the certificate was issued. Vehicles sold in violation of that condition will not be covered by the certificate and hence will be subject to the currently available penalties. Today's notice proposes appropriate revisions to 40 CFR 86.096–30 to address this enforcement issue.

Although EPA is proposing in today's notice largely to adopt these phase-in elements of CARB SFTP and apply them on a national basis to the National LEV program, doing so raises several issues that EPA must consider. Perhaps most important is the implication that the structure of the phase-in as proposed by CARB allows Tier 1 vehicles to delay meeting SFTP standards beyond when they would have to meet SFTP standards under the currently applicable federal program. A couple of mitigating factors suggest that harmonizing with CARB in this regard is on balance a desirable policy. First, because of the requirement in the National LEV Program that Tier 1 vehicles and TLEVs can not be sold in the OTR after MY2000 unless those same engine families are certified as Tier 1 vehicles and TLEVs in California, it will be the California NMOG fleet average that will be driving the number of Tier 1 vehicles and TLEVs in the OTR (and in the rest of the country, for all practical purposes). It is EPA's expectation that Tier 1 vehicles in particular are unlikely to exist beyond the 2002 or 2003 model year, and if they exist in those years they will be a very small fraction of the new vehicle fleet. The environmental impact of not certifying this very small number of vehicles to SFTP standards should be negligible. Second, while the structure of the CARB phase-in requirements allows manufacturers to put off demonstrating compliance of Tier 1 vehicles with SFTP standards, potentially until such vehicles are no longer produced, for those years where a manufacturer continues to sell such vehicles they must phase some of them into SFTP standards or phase in additional LEVs or ULEVs to meet the overall fleet phase-in requirements. Given the overall benefits of achieving a fleet of LEVs and ULEVs that meet an appropriate SFTP standard, EPA believes that it is appropriate to harmonize the NLEV SFTP phase-in with the phase-in schedule as proposed by CARB.

4. Implementation Compliance

EPA must determine manufacturer compliance with the SFTP phase-in levels under the National LEV program. EPA is proposing to give the manufacturers the option of combining their entire fleet of light-duty vehicles and light light-duty trucks and such that this combined fleet meets the applicable phase-in requirements. EPA is also proposing to have manufacturers demonstrate compliance with the phase-in requirements based on vehicles sold outside of California, but is taking comment on having compliance determinations based on vehicles sold only in California or in all states.

EPA believes that combining light-duty vehicles and light light-duty trucks into one fleet and then determining SFTP phase-in requirements based on the combined fleet makes sense by giving manufacturers some additional flexibility in meeting the requirements without having detrimental environmental impacts. Manufacturers will have the ability to determine which light-duty vehicles and light light-duty trucks to include in their SFTP fleet for a particular model year instead of meeting specified phase-in levels for each vehicle class. For example, in MY2002, assuming equal numbers of light-duty vehicles and light light-duty trucks are produced, a manufacturer could certify 45% of its light-duty vehicle fleet and 55% of its light light-duty truck fleet to SFTP standards as long as 50% of its overall fleet met the SFTP standards, provided that all other provisions of the phase-in requirements were met. EPA does not believe that this proposal would have detrimental environmental effects because EPA does not expect actual SFTP phase-ins between vehicle classes to differ significantly. This proposal is consistent with CARB's requirements as well as the Federal Tier 1 SFTP regulations.

EPA has concerns about the manufacturers' proposal to show compliance with National LEV SFTP requirements based on a manufacturer's California fleet mix as opposed to its National LEV fleet mix. While EPA anticipates that vehicle product offering between California and the rest of the country will be similar, it is not certain that sales of such vehicles will be proportionately equivalent between the two regions. As California accounts for roughly only 10 percent of U.S. sales, EPA is concerned about having this small fraction dictate phase-in for 90% of the fleet. For example, harsher weather patterns elsewhere could cause sales of convertible vehicles in California to make up a greater percentage of a manufacturer's California fleet than of the manufacturer's federal fleet, while sales of four-wheel drive vehicles could be a greater percentage of the federal fleet. Sales mix differences between the California and Federal fleet can also differ between manufacturers. Thus, EPA is hesitant at this time to tie compliance with the National LEV SFTP standards solely to the vehicle mix offered in California. EPA does not believe that requiring compliance based on Federal, as opposed to California sales, is an undue burden on manufacturers. EPA has used a similar approach in other programs, such as the Tier 1 standards, on the understanding that providing a phase-in to manufacturers provides them with sufficient flexibility and burden reduction.

EPA is taking comment, however, on the manufacturers' proposal to base National LEV SFTP compliance on their vehicle sales mixes in California. Another option is to have EPA use the California vehicle sales mix, but include a maximum percentage by which a manufacturer's California SFTP fleet and its National LEV SFTP fleet may vary. A variance of five percentage points would still allow manufacturers to make their compliance determinations based on their California vehicle sales mix, but it would also ensure that the National LEV SFTP fleet will be substantially similar to the California fleet. This would mean that a manufacturer would certify 25% of its California fleet to SFTP standards in MY2002 and would be in compliance with National LEV SFTP requirements

as long as its Federal sales of SFTP-certified vehicles were at least 20% of the 49-state sales total.

EPA is also taking comment on a second alternative which would combine sales of California, any state with a Section 177 program, and Federal vehicles for the purpose of calculating fleet percentages in determining phase-in compliance. Compliance would be determined by analyzing a manufacturer's entire fleet of vehicles sold in the United States for compliance with the applicable SFTP phase-in requirements. A manufacturer choosing to overcomply in California would be able to have its Federal SFTP fleet levels somewhat below the applicable phase-in percentages, but the nationwide averaging requirement would ensure that the difference between California and Federal SFTP fleets would be minimal. This alternative would also give manufacturers credit for the California fleet sales and ensure that they meet the phase-in targets, while properly accounting for the bulk of sales which are in the other 49 states. In addition, this approach is consistent with the original Tier 1 final rule in which EPA elected to allow manufacturers to include California sales and sales to section 177 states in the phase-in compliance calculation. See 56 FR 25724 (June 5, 1991).

X. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action''. The Final Framework Rule was determined to be a ''significant regulatory action'' because it had an annual effect on the economy of more than $100 million. 62 FR 31231. The regulations being proposed in this rule will not have an economic impact greater than $100 million. EPA has submitted this rule to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA prepared a Regulatory Impact Analysis (RIA) for the Final Framework Rule (docket A–95–26, V–A–02). EPA indicated that the RIA will need to be modified to reflect the later start date proposed today and any new cost information. EPA will issue a final RIA at the time the supplemental final rule is issued.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities. Only manufacturers of motor vehicles, a group which does not contain a substantial number of small entities, will have to comply with the requirements of this rule. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Under sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA), EPA generally must prepare a written statement to accompany any proposed or final rule that includes a federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year.

EPA has determined that the written statement requirements of sections 202 and 205 of UMRA do not apply to today's rule, and thus do not require EPA to conduct further analyses pursuant to those requirements. National LEV is not a federal mandate because it does not impose any enforceable duties and because it is a voluntary program. Because National LEV would not impose a federal mandate on any party, section 202 does not apply to this rule. Even if these unfunded mandates provisions did apply to this rule, they are met by the Regulatory Impact Analysis prepared pursuant to Executive Order 12866 and contained in the docket.

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 not prepared such a plan because small governments would not be significantly or uniquely impacted by the rule.

Under section 204, an agency must develop an effective process for state, local, and tribal officials to provide meaningful input in the development of regulatory proposals that contain significant intergovernmental mandates. Section 204 does not apply because this rule would not impose any mandates. Throughout the National LEV process, however, EPA has provided numerous opportunities for states to provide meaningful input.

D. Reporting and Recordkeeping Requirements

Today's rule does not impose any additional reporting or recordkeeping burdens on an affected party. The Information Collection Request (ICR) for the National LEV program was developed as part of the Final Framework Rule and has already been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An ICR document has been prepared by EPA (ICR No. 1761.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, EPA, 401 M St., SW (Mail Code 2137), Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

XI. Statutory Authority

The promulgation of these regulations is authorized by sections 177, 202, 203, 204, 205, 206, 207, 208 and 301 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA) (42 U.S.C. 7507, 7521, 7522, 7523, 7524, 7525, 7541, 7542, and 7601).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential Business Information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 4, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code

of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—[Amended]

2. Section 86.096–30 is amended by adding paragraph (a)(23) to read as follows:

§ 86.096–30 Certification.

* * * * *

(a) * * *

(23) For all light-duty vehicles and light light-duty trucks certified to standards under §§ 86.1710 through 86.1712, the provisions of paragraphs (a)(23)(i) through (iv) of this section apply.

(i) All certificates issued are conditional upon manufacturer compliance with all provisions of §§ 86.1709 through 86.1709 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages of the Alternative Phase-In schedule requirements (if chosen), in § 86.1708(a)(1)(i) for light-duty vehicles or § 86.1708(a)(1)(i) for light light-duty trucks, will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(iv) For recall and warranty purposes, vehicles not covered by a certificate because of a violation of this condition of the certificate will continue to be held to the standards stated in the certificate that would have otherwise applied to the vehicles.

* * * * *

Subpart R—[Amended]

3. Section 86.1702–97 is redesignated as § 86.1702–99 and amended in paragraph (b) by revising the definitions for ''Northeast Trading Region'' and ''Point of first sale'' and by adding new definitions in alphabetical order for ''All States Trading Region,'' ''Covered State,'' ''Existing ZEV Mandate,'' ''Ozone Transport Commission States,'' ''Section 177 Program,'' and ''ZEV Mandate,'' to read as follows:

§ 86.1702–99 Definitions.

* * * * *

(b) * * *

* * * * *

All States Trading Region (ASTR) means the region comprised of all states except the OTC States that have not opted into National LEV pursuant to the opt-in provisions at § 86.1705 or that have opted out of National LEV and whose opt outs have become effective, as provided at § 86.1707; and California; and any state outside the OTR with a Section 177 Program in effect that does not allow National LEV as a compliance alternative.

* * * * *

Covered State means an OTC State that has opted into National LEV and meets the conditions specified under § 86.1705(d).

* * * * *

Existing ZEV Mandate means any OTC State regulation or other law that imposes (or purports to impose) obligations on auto manufacturers to produce or sell a certain number or percentage of ZEVs and that was adopted prior to the date that the state submitted a National LEV opt-in notification to EPA.

* * * * *

Northeast Trading Region (NTR) means the region comprised of the OTC States that have opted into National LEV pursuant to the opt-in provisions at § 86.1705(e) and have not opted out of National LEV pursuant to the opt-out provisions at § 86.1707 or whose opt outs have not yet become effective, as provided at § 86.1707.

* * * * *

Ozone Transport Commission States or OTC States means the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia, and the District of Columbia.

* * * * *

Point of first sale is the location where the completed LDV or LDT is purchased, also known as the final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which comprises the point of first sale. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

Section 177 Program means state regulations or other laws, except ZEV Mandates, which apply to any of the following categories of motor vehicles: Passenger cars, light duty trucks up through 6,000 pounds GVWR, and medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

* * * * *

ZEV Mandate means any state regulation or other law that imposes (or purports to impose) obligations on auto manufacturers to produce, deliver for sale, or sell a certain number or percentage of ZEVs.

4. Section 86.1705–97 is redesignated as § 86.1705–99 and amended by revising the heading of the section, by adding a heading to paragraph (a), and by revising paragraphs (a) introductory text, (a)(2), (a)(3), and (b) through (g), to read as follows:

§ 86.1705–99 General provisions; opt-in.

(a) Covered manufacturers. Covered manufacturers must comply with the provisions in this subpart, and in addition, must comply with the requirements of 40 CFR parts 85 and 86. A manufacturer shall be a covered manufacturer if:

* * * * *

(2) Where a manufacturer has included a condition on opt-in provided for in paragraph (c)(2) of this section, that condition has been satisfied; and

(3) The manufacturer has not opted out, pursuant to § 86.1707, or the manufacturer has opted out but that opt-out has not become effective under § 86.1707.

(b) Covered manufacturers must comply with the standards and requirements specified in this subpart beginning in model year 1999. A manufacturer not listed in § 86.1706(b) that opts into the program after EPA issues a finding pursuant to § 86.1706(a) that the program is in effect must comply with the standards and requirements of this subpart beginning in the model year that includes January 1 of the calendar year after the calendar year in which that manufacturer opts in. Light-duty vehicles and light light-duty trucks sold by covered manufacturers must comply with the provisions of this subpart.

(c) Manufacturer opt-ins. (1) To opt into the National LEV program, a motor vehicle manufacturer must submit a written opt-in notification to the Administrator signed by a person or

entity within the corporation or business with authority to bind the corporation or business to its election and holding the position of vice president for environmental affairs or a position of comparable or greater authority. The notification must unambiguously and unconditionally (apart from the permissible conditions specified in paragraph (c)(2) of this section) indicate the manufacturer's agreement to opt into the program and be subject to the provisions in this subpart, and include the following language:

XX COMPANY, its subsidiaries, successors and assigns hereby opts into the voluntary National LEV program, as defined in 40 CFR part 86, subpart R, and agrees to be legally bound by all of the standards, requirements and other provisions of the National LEV program. XX COMPANY commits not to challenge EPA's authority to establish or enforce the National LEV program, and commits not to seek to certify any vehicle except in compliance with the regulations in subpart R.

(2) The opt-in notification may indicate that the manufacturer opts into the program subject to either or both of the following conditions:

(i) That the Administrator finds under § 86.1706 that the National LEV program is in effect, to be indicated with the following language:

This opt-in is subject to the condition that the Administrator make a finding pursuant to 40 CFR 86.1706 that the National LEV program is in effect.

(ii) That certain states (limited to the OTC States) opt into National LEV pursuant to § 86.1705, to be indicated with the following language:

This opt-in is subject to the condition that each of the states of [list state names] opt into National LEV pursuant to 40 CFR 86.1705.

(3) A manufacturer shall be considered to have opted in upon the Administrator's receipt of the opt-in notification and satisfaction of the conditions set forth in paragraph (c)(2) of this section, if applicable.

(d) Covered states. An OTC State shall be a covered state if:

(1) The state has opted into National LEV pursuant to paragraph (e) of this section;

(2) Where a state has included a condition on opt-in provided for in paragraph (e)(3)(viii) of this section, that condition has been satisfied; and

(3) The state has not opted out, pursuant to § 86.1707, or the state has opted out but that opt-out has not become effective under § 86.1707.

(e) OTC State opt-ins. To opt into the National LEV program, a state must submit the following as an opt-in notification to EPA:

(1)(i) An Executive Order signed by the governor of the state (or the mayor of the District of Columbia) that unambiguously and unconditionally (apart from the permissible conditions set forth in this section) indicates the state's agreement to opt into the National LEV program and includes the following language (language in brackets indicates that either formulation is acceptable):

This instrument [commits STATE to / opts STATE into] the National Low Emission Vehicle (National LEV) program, in accordance with the EPA National LEV program regulations at 40 CFR part 86, subpart R.

I hereby direct HEAD OF APPROPRIATE STATE AGENCY to forward to EPA with my concurrence the [enclosed letter signed / enclosed letter and proposed regulations signed and proposed] by the HEAD OF APPROPRIATE STATE AGENCY, which [specifies /specify] the details of STATE's commitment to the National LEV program.

I hereby direct APPROPRIATE STATE AGENCY to follow the procedures prescribed by the general statutes of STATE to take the necessary steps to adopt regulations and submit a state implementation plan revision committing STATE to National LEV in accordance with the EPA National LEV program regulations on SIP revisions at 40 CFR part 86, subpart R, and with section 110 of the Clean Air Act and its implementing regulations at 40 CFR parts 51 and 52.

(ii) States with Existing ZEV Mandates may add language to the Executive Order submitted pursuant to paragraph (e)(1) of this section confirming that this opt-in will not affect the state's requirements pertaining to ZEVs.

(2) If a state does not submit an Executive Order pursuant to paragraph (e)(1) of this section, a letter signed by the governor of the state (or the mayor of the District of Columbia) that unambiguously and unconditionally (apart from the permissible conditions set forth in this section) indicates the state's agreement to opt into the National LEV program and includes the following language (language in brackets indicates that either formulation is acceptable):

(i) ''This submittal is made in accordance with the EPA National Low Emission Vehicle (National LEV) regulations at 40 CFR part 86, subpart R to [commit STATE to / opt STATE into] the National LEV program.''

(ii)(A) ''I am forwarding to EPA the [enclosed letter which I signed / enclosed letter and proposed regulations which were signed and proposed] by HEAD OF APPROPRIATE STATE AGENCY at my direction, and which [specifies / specify] the details of STATE's commitment to the National LEV program.'' or;

(B) ''I am forwarding to EPA and concur with the [enclosed letter signed / enclosed letter and proposed regulations signed and proposed] by HEAD OF APPROPRIATE STATE AGENCY, which [specifies / specify] the details of STATE's commitment to the National LEV program.''

(iii) ''I [hereby direct / have directed] APPROPRIATE STATE AGENCY to follow the procedures prescribed by the general statutes of STATE to take the necessary steps to adopt regulations and submit a state implementation plan revision committing STATE to National LEV in accordance with the EPA National LEV regulations on SIP revisions at 40 CFR part 86, subpart R, and with section 110 of the Clean Air Act and its implementing regulations at 40 CFR parts 51 and 52.''

(iv) States with Existing ZEV Mandates may add language to the letter submitted pursuant to section (e)(2) of this section confirming that this opt-in will not affect the state's requirements pertaining to ZEVs.

(3) A letter signed by the head of the appropriate state agency that would unconditionally (except as set forth in this section) include the following:

(i) States without any Section 177 Program or with a Section 177 Program but not an Existing ZEV Mandate shall include the following language:

National LEV is designed as a compliance alternative for OTC State programs adopted pursuant to section 177 of the Clean Air Act that apply to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900. For the duration of STATE's participation in National LEV, [STATE will allow manufacturers to / manufacturers may] comply with National LEV in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to the vehicle classes specified above, including any ZEV mandates. STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707.

For the duration of STATE's participation in National LEV, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective before model year 2006.

(ii) States with a Section 177 Program and an Existing ZEV Mandate, shall include the following language:

National LEV is designed as a compliance alternative for OTC State programs adopted pursuant to section 177 of the Clean Air Act that apply to passenger cars, light duty trucks up through 6,000 pounds GVWR, and medium duty vehicles from 6,001 to 14,000

pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900. With the exception of any requirements pertaining to ZEVs, for the duration of STATE's participation in National LEV, [STATE will allow manufacturers to / manufacturers may] comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to the vehicle classes specified above. STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707. Any existing or future requirement pertaining to ZEVs is not affected by STATE's acceptance of National LEV as a compliance alternative for other state requirements.

(iii) All states shall include the following language:

Based on EPA's determination in the preamble to the final supplemental National LEV rule [CITE], STATE believes that National LEV will achieve reductions of VOC and NO_x emissions that are equivalent to or greater than the reductions that would be achieved through OTC State adoption of California Low Emission Vehicle programs in the Ozone Transport Region.

(iv) All states shall include the following language:

STATE intends National LEV to be STATE's new motor vehicle emissions control program.

(v) All states shall include the following language:

STATE recognizes that motor vehicle manufacturers are committing to National LEV with the expectation that, through model year 2006, OTC States will allow National LEV as a compliance alternative for state Section 177 Programs applying to the vehicle classes specified above (except any requirements pertaining to ZEVs in states with Existing ZEV Mandates). It is our intent to abide by this commitment. However, the provisions of this letter will not have the force of law until STATE adopts them as state regulations. Adoption of state regulations and the contents of a final SIP revision will be determined through a state rulemaking process pursuant to the state requirements at [CITE to STATE law] and federal law. Also, STATE must comply with any subsequent STATE legislation that might affect this commitment.

(vi) All states shall include the following language:

If the manufacturers exit the National LEV program pursuant to the EPA National LEV regulations at 40 CFR 86.1707, STATE acknowledges that the transition from National LEV requirements to any STATE Section 177 Program applying to the vehicle classes specified above, including any requirements pertaining to ZEVs (except any requirements pertaining to ZEVs in states with Existing ZEV Mandates), will proceed in accordance with the EPA National LEV regulations at 40 CFR 86.1707.

(vii) All states shall include the following language:

STATE supports the legitimacy of the National LEV program and EPA's authority to promulgate the National LEV regulations.

(viii) Any state may include the following language:

This [commitment/opt-in] is conditioned on all motor vehicle manufacturers (listed in EPA regulations at 40 CFR 86.1706(b)) opting into National LEV and on EPA finding that National LEV is in effect pursuant to 40 CFR 86.1706.

(4) In lieu of statements described in paragraphs (e)(3)(i), (e)(3)(ii) and (e)(3)(vi) of this section, states may submit proposed regulations containing the provisions required under paragraphs (g)(1), (g)(2), (g)(3), and (g)(5) of this section.

(f) A state shall be considered to have opted in upon the Administrator's receipt of the opt-in notification and satisfaction of the conditions set forth in paragraph (e)(3)(viii) of this section, if applicable.

(g) Each OTC State that opts into National LEV pursuant to paragraph (e) of this section shall submit a SIP revision within one year of the date that EPA finds National LEV is in effect (pursuant to § 86.1706(a)), except for the District of Columbia, New Hampshire, Delaware, and Virginia, for which the deadline is 18 months from the date of such finding. The SIP revisions shall include the following:

(1) Covered States without any Section 177 Program, or with a Section 177 Program but not an Existing ZEV Mandate, shall submit regulations containing the following language:

For the duration of STATE's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program, including any mandates for sales of zero emission vehicles (ZEVs), adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to passenger cars , light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707.

(2) Covered States with a Section 177 Program and an Existing ZEV Mandate shall submit regulations containing the following language:

With the exception of any STATE requirements pertaining to zero emission vehicles (ZEVs), for the duration of STATE's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with any program adopted by STATE pursuant to the authority provided in section 177 of the Clean Air Act applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900.

STATE's participation in National LEV extends until model year 2006, except as provided in 40 CFR 86.1707.

Any existing or future STATE requirement pertaining to ZEVs is not affected by STATE's acceptance of National LEV as a compliance alternative for other state requirements.

(3) All covered states shall submit regulations containing the following language:

If a covered manufacturer, as defined at 40 CFR 86.1702, opts out of the National LEV program pursuant to the EPA National LEV regulations at 40 CFR 86.1707, the transition from National LEV requirements to any STATE section 177 program applicable to passenger cars, light duty trucks up through 6,000 pounds GVWR, and/or medium duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900, will proceed in accordance with the EPA National LEV regulations at 40 CFR 86.1707.

(4) All covered states shall accompany the regulatory language with the following language:

STATE commits to support National LEV as an acceptable alternative to state CAL LEV programs.

STATE recognizes that its commitment to National LEV is necessary to ensure that National LEV remain in effect.

STATE is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at section 110 and EPA regulations at 40 CFR Part 86 and 40 CFR Parts 51 and 52.

(5) States without Existing ZEV Mandates shall accompany the regulatory language with the following language:

For the duration of STATE's participation in National LEV, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective prior to model year 2006.

5. Section 86.1706–97 is revised to read as follows:

§ 86.1706–97 National LEV program in effect.

(a) No later than [date of first business day 75 days after date of signature of

final rule] EPA shall issue a finding as to whether National LEV is in effect. EPA shall base this finding on opt-in notifications from OTC States submitted pursuant to § 86.1705(e) and received by EPA [date 45 days after date of signature of final rule], and on opt-in notifications from manufacturers submitted pursuant to § 86.1705(c) and received by EPA [date 60 days after date of signature of final rule].

(b) EPA shall find that the NLEV program is in effect and shall subsequently publish this determination if the following conditions have been met:

(1) All manufacturers listed in paragraph (c) of this section have lawfully opted in pursuant to § 86.1705(c) and any conditions placed on the opt-ins allowed under § 86.1705(c)(2) have been met (apart from a condition that EPA find the National LEV program in effect);

(2) All OTC States have lawfully opted in pursuant to § 86.1705(e) and any conditions placed on the opt-ins allowed under § 86.1705(e)(3)(viii) have been met (apart from a condition that EPA find the National LEV program in effect); and

(3) No valid opt out has become effective pursuant to § 86.1707.

(c) List of manufacturers of light-duty vehicles and light-duty trucks:

American Suzuki Motor Corporation
BMW of North America, Inc.
Chrysler Corporation
Fiat Auto U.S.A., Inc.
Ford Motor Company
General Motors Corporation
Hyundai Motor America
Isuzu Motors America, Inc.
Jaguar Motors Ltd.
Kia Motors America, Inc.
Land Rover North America, Inc.
Mazda (North America) Inc.
Mercedes-Benz of North America
Mitsubishi Motor Sales of America, Inc.
Nissan North America, Inc.
Porsche Cars of North America, Inc.
Rolls-Royce Motor Cars Inc.
Saab Cars USA, Inc.
Subaru of America, Inc.
Toyota Motor Sales, U.S.A., Inc.
Volkswagen of America, Inc.
Volvo North America Corporation

6. Section 86.1707–99 is added to subpart R to read as follows:

§ 86.1707–99 General provisions; opt-outs.

A covered manufacturer or covered state may opt out of the National LEV program only according to the provisions of this section. Vehicles certified under the National LEV program must continue to meet the standards to which they were certified, regardless of whether the manufacturer of those vehicles remains a covered manufacturer. A manufacturer that has opted out remains responsible for any debits outstanding on the effective date of opt-out, pursuant to § 86.1710(d)(3).

(a) *Procedures for opt-outs—manufacturers.* To opt out of the National LEV program, a covered manufacturer must notify the Administrator as provided in § 86.1705(c)(1), except that the notification shall specify the condition and final action allowing opt-out, indicate the manufacturer's intent to opt out of the program and no longer be subject to the provisions in this subpart, and specify an effective date for the opt-out. The effective date shall be specified in terms of the first model year for which the opt-out shall be effective, but shall be no earlier than the applicable date indicated in paragraphs (d) through (i) of this section. For an opt-out pursuant to paragraph (d) of this section, the manufacturer shall specify the revision triggering the opt-out and shall also provide evidence that the triggering revision does not harmonize the standard or requirement with a comparable California standard or requirement, if applicable, or that the triggering revision has increased the stringency of the revised standard or requirement, if applicable. The notification shall include the following language:

XX COMPANY, its subsidiaries, successors and assigns hereby opt out of the voluntary National LEV program, as defined in 40 CFR part 86, subpart R.

(b) *Procedures for opt-outs—OTC states.* To opt out of the National LEV program, a covered state must notify the Administrator through a written statement from the head of the appropriate state agency. The notification shall specify the final action allowing opt-out, indicate the state's intent to opt out of the program and no longer be subject to the provisions in this subpart, and specify an effective date for the opt-out. The effective date shall be specified in terms of the first model year for which the opt-out shall be effective, but shall be no earlier than the applicable date indicated in paragraphs (d) through (k) of this section. The notification shall include the following language:

STATE hereby opts out of the voluntary National LEV program, as defined in 40 CFR part 86, subpart R.

(c) *Procedures for opt-outs—EPA notification.* Upon receipt of an opt-out notification under this section, EPA shall promptly notify the covered states and covered manufacturers of the opt-out. Publication in the **Federal Register** of notice of receipt of the opt-out notification is sufficient but not necessary to meet EPA's obligation to notify covered states and covered manufacturers.

(d) *Conditions allowing manufacturer opt-outs—change to Stable Standards.* A covered manufacturer may opt out if EPA promulgates a final rule or other final agency action making a revision not specified in paragraph (d)(9)(iii) of this section to a standard or requirement listed in paragraph (d)(9)(i) of this section and the covered manufacturer objects to the revision.

(1) A covered manufacturer may opt out within 180 days of the EPA action allowing opt-out under this paragraph (d). A valid opt-out based on a revision to a Core Stable Standard may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA. A valid opt-out based on a revision to a Non-Core Stable Standard may become effective no earlier than the first model year to which that revision applies.

(i) Only a covered manufacturer that objects to a revision may opt out if EPA adopts that revision, except that if such a manufacturer opts out, other manufacturers that did not object to the revision may also opt out pursuant to § 86.1707(i). An objection shall be sufficient for this purpose only if it was filed during the public comment period on the proposed revision and the objection states that the proposed revision is sufficiently significant to allow opt-out under § 86.1707(d).

(2) Within sixty days of receipt of an opt-out notification, EPA shall determine whether the opt-out is valid by determining whether the alleged condition allowing opt-out has occurred and whether the opt-out complies with the requirements under paragraphs (a) and (d) of this section. An EPA determination regarding the validity of an opt-out is not a rule, but is a nationally applicable final agency action subject to judicial review pursuant to section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)).

(3) A manufacturer that has submitted an opt-out notification to EPA remains a covered manufacturer until EPA or a reviewing court determines that the opt-out is valid and the opt-out has come into effect under paragraph (d)(1) of this section.

(4) In the event that a manufacturer petitions for judicial review of an EPA determination that an opt-out is invalid, the manufacturer remains a covered manufacturer until final judicial resolution of the petition. Pending resolution of the petition, and after the

date that the opt-out would have come into effect under paragraph (d)(1) of this section if EPA had determined the opt-out was valid, the manufacturer may certify vehicles to any standards in this part applicable to vehicles certified in that model year and sell such vehicles without regard to the limitations contained in § 86.1711–99. However, if the opt-out is finally determined to be invalid, the manufacturer will be liable for any failure to comply with §§ 86.1710 through 86.1712, except for failure to comply with the limitations contained in § 86.1711(b).

(5) Upon the effective date of a manufacturer's opt-out based on this condition, that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, and such lead time shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(6) If a covered manufacturer opts out based on this condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of the date of either an EPA finding that the opt-out is valid, or a judicial ruling that a disputed opt-out is valid. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of the EPA's receipt of the state's opt-out notification).

(7) In states that do not opt out, obligations under National LEV shall be unaffected for covered manufacturers.

(8) In a state that opts out pursuant to paragraph (d)(6) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the state's opt out. Upon the effective date of the state's opt out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(9)(i) The following are the emissions standards and requirements that, if revised, may provide covered manufacturers the opportunity to opt out pursuant to paragraph (d)(1) of this section:

(A) The tailpipe emissions standards for NMOG, NO_X, CO, HCHO, and PM specified in § 86.1708(b) and (c) and § 86.1709(b) and (c);

(B) Fleet average NMOG standards and averaging, banking and trading provisions specified in § 86.1710;

(C) Provisions regarding limitations on sale of Tier 1 vehicles and TLEVs contained in § 86.1711;

(D) The compliance test procedure (Federal Test Procedure) as specified in subparts A and B of this part, as used for determining compliance with the exhaust emission standards specified in § 86.1708(b) and (c) and § 86.1709(b) and (c);

(E) The compliance test fuel, as specified in § 86.1771;

(F) The definition of low volume manufacturer specified in § 86.1702;

(G) The on-board diagnostic system requirements specified in § 86.1717;

(H) The light-duty vehicle refueling emissions standards and provisions specified in § 86.099–8(d), and the light-duty truck refueling emissions standards and provisions specified in § 86.001–9(d);

(I) The cold temperature carbon monoxide standards and provisions for light-duty vehicles specified in § 86.099–8(k), and for light light-duty trucks specified in § 86.099–9(k);

(J) The evaporative emissions standards and provisions for light-duty vehicles specified in § 86.099–8(b), and the evaporative emissions standards and provisions for light light-duty trucks specified in § 86.099–9(b);

(K) The reactivity adjustment factors and procedures specified in § 86.1777(d);

(L) The Supplemental Federal Test Procedure, standards and phase-in schedules specified in § 86.000–8(e), § 86.000-9(e), § 86.127(f) and (g), § 86.129(e) and (f), § 86.130(e), § 86.131(f), § 86.132(n) and (o), § 86.158, § 86.159, § 86.160, § 86.161, § 86.162, § 86.163, § 86.164, and Appendix I to this part, paragraphs (g) and (h).

(ii) The standards and requirements listed in paragraphs (d)(9)(i)(A) through (d)(9)(i)(F) of this section are the ''Core Stable Standards''; the standards and requirements listed in paragraphs (d)(9)(i)(G) through (d)(9)(i)(L) of this section are the ''Non-Core Stable Standards.''

(iii) The following types of revisions to the Stable Standards listed in paragraph (d)(9)(i) of this section do not provide covered manufacturers the right to opt out of the National LEV program:

(A) Revisions to which covered manufacturers do not object;

(B) Revisions to a Non-Core Stable Standard that do not increase the overall stringency of the standard or requirement;

(C) Revisions to a Non-Core Stable Standard that harmonize the standard or requirement with the comparable California standard or requirement for the same model year (even if the harmonization increases the stringency of the standard or requirement), provided that EPA can only raise to 1.0 any of the reactivity adjustment factors specified in 86.1777 applicable to gasoline meeting the specifications of 86.1771(a)(1), even if the California factor is greater than 1.0;

(D) Revisions to a Non-Core Stable Standard that are effective after model year 2006;

(E) Revisions to cold temperature carbon monoxide standards and provisions for light-duty vehicles (as specified in § 86.099–8(k)) and for light light-duty trucks (as specified in § 86.099–9(k)) that are effective after model year 2000.

(10) Promulgation of mandatory standards and requirements that end the effectiveness of the National LEV program pursuant to § 86.1701(c) does not provide an opportunity to opt out of the National LEV program.

(e) *Conditions allowing manufacturer opt-outs—state Section 177 Program that does not allow National LEV as a compliance alternative.* A covered manufacturer may opt out of National LEV if a covered state takes final action such that it has in its regulations a state Section 177 Program and/or a ZEV Mandate (except in a state with an Existing ZEV Mandate at the time of its opt-in), that, prior to the 2006 model year, does not allow National LEV as a compliance alternative. A manufacturer could opt out based on this condition even if the state regulations are contrary to an approved SIP revision committing the state to National LEV pursuant to § 86.1705(g). For purposes of this paragraph (e), such a state shall be called the ''violating state''.

(1) A covered manufacturer may opt out any time after the violating state takes such final action, provided that the violating state has not withdrawn or otherwise nullified the relevant final action. An opt-out under this opt-out condition may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA.

(2) As of the model year named for the calendar year following the violating state's final action, the violating state shall no longer be included in the applicable trading region for purposes of calculating covered manufacturers' compliance with the fleet average NMOG standards under § 86.1710. Beginning in that model year and until the violating state's regulations become effective pursuant to sections 110(l) and 177 of the Clean Air Act, the National LEV program allows covered manufacturers to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. The two-year lead time required by section 177 of the Clean Air Act for the state Section 177 Program or ZEV Mandate shall run from the date of the final state action. Notwithstanding an earlier effective date of a manufacturer's opt out based on this condition, the manufacturer's opt out is not effective in the violating state until the two-year lead time for the violating state's program has passed (which shall run from the date of the final violating state action).

(3) Upon the effective date of a manufacturer's opt-out based on this condition in any covered state that is not a violating state under this paragraph (e), that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place in a non-violating state at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this opt-out condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(6) In a non-violating state that opts out pursuant to paragraph (e)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(f) *Conditions allowing manufacturer opt-outs—failure to submit SIP revision.* A covered manufacturer may opt out of National LEV if a covered state fails to submit a National LEV SIP revision on the date specified in § 86.1705(g). For purposes of this paragraph (f), such a state shall be called the ''violating state''.

(1) A covered manufacturer may opt out any time after the violating state misses the deadline for its National LEV SIP revision, provided that the violating state has not submitted a National LEV SIP revision prior to the manufacturer's submission of its opt-out notification. If a manufacturer opts out within 180 days from the deadline for the state to submit its National LEV SIP revision, the opt-out must be conditioned on the state not submitting a National LEV SIP revision within 180 days from the deadline for such SIP revision. If the state submits such a SIP revision within the 180-day period, any manufacturer opt-outs based on this opt-out condition would be invalidated and would not come into effect. An opt-out under this opt-out condition may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA, or the date 180 days from the deadline for the state to submit its National LEV SIP revision, whichever is later.

(2) For a manufacturer that opts out based on this opt-out condition, as of model year 2000 (or model year 2001 if the violating state is the District of Columbia, New Hampshire, Delaware, or Virginia) or the model year named for the calendar year following EPA's receipt of the opt-out notification, whichever is later, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out based on this condition to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, in any covered state that is not a violating state under this paragraph (f), that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place in a non-violating state at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this opt-out condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar

days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(6) In a non-violating state that opts out pursuant to paragraph (f)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(g) *Conditions allowing manufacturer opt-outs—lack of an approvable SIP revision.* A covered manufacturer may opt out of National LEV if EPA disapproves a National LEV SIP revision submitted by a covered state pursuant to § 86.1705(g) and the State fails to correct the SIP revision. For purposes of this paragraph (g), such a state shall be called the ''violating state.''

(1) A covered manufacturer may opt out any time after EPA has disapproved a state's National LEV SIP revision provided that it is more than a year after EPA's disapproval and the state has not yet submitted a revised National LEV SIP. If the state has submitted a revised National LEV SIP revision, covered manufacturers may not opt out unless and until EPA disapproves the state's revised National LEV SIP revision. An opt-out under this condition may be effective no earlier than the model year named for the calendar year following the calendar year in which the EPA receives the manufacturer's opt-out notification.

(2) For a manufacturer that opts out based on this opt-out condition, as of the model year named for the calendar year following EPA's receipt of the opt-out notification, the violating state shall no longer be included in the applicable trading region for purposes of calculating that manufacturer's compliance with the fleet average NMOG standards under § 86.1710. Beginning in that model year and until the manufacturer's opt-out becomes effective, the National LEV program allows a manufacturer that has opted out based on this condition to certify and produce for sale vehicles meeting the exhaust emission standards of § 86.096–8(a)(1)(i) and subsequent model year provisions or § 86.097–9(a)(1)(i) and subsequent model year provisions in the violating state. National LEV obligations in the violating state remain unchanged for those manufacturers that do not opt out based on this condition.

(3) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, in any covered state that is not a violating state under this paragraph (g), that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, in a non-violating state a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this opt-out condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(6) In a non-violating state that opts out pursuant to paragraph (g)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(h) *Conditions allowing manufacturer opt-outs—EPA failure to consider in-use fuel issues.* A covered manufacturer may opt out of National LEV if EPA does not meet its obligations related to fuel sulfur effects, as those obligations are set forth in paragraph (h)(7) of this section.

(1) A manufacturer may request in writing that EPA consider taking a specific action with regard to a fuel sulfur effect described in paragraph (h)(7) of this section. The request must identify the alleged fuel sulfur related problem, demonstrate that the problem exists and is caused by in-use fuel sulfur levels, and ask EPA to consider taking a specific action. Within 60 days of EPA's receipt of the manufacturer's request, EPA must respond to the manufacturer's request in writing, stating the Agency's decision and explaining the basis for the decision.

(2) If EPA fails to respond to a manufacturer's request within the time provided, the covered manufacturer that submitted the request may opt out within 180 days of the deadline for the EPA response (if such a manufacturer opts out, other manufacturers that did not submit requests may also opt out pursuant to § 86.1707(i). Once EPA responds to the request, even if after the expiration of the 60-day EPA deadline, a manufacturer that had not yet submitted an opt-out notification may no longer opt out based on this opt-out condition. An opt-out based on this condition may be effective no earlier than the model year named for the calendar year following the calendar year in which EPA received the manufacturer's opt-out notification.

(3) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, a manufacturer

waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, and such lead time shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out based on this condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(5) In states that do not opt out, obligations under National LEV shall not be affected for covered manufacturers.

(6) In a state that opts out pursuant to paragraph (h)(4) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the state's opt out. Upon the effective date of the state's opt out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(7) Following are EPA's obligations related to the potential effects of sulfur levels in in-use fuels. If EPA does not meet the obligations pursuant to paragraph (h)(1) of this section, it will provide covered manufacturers the opportunity to opt out pursuant to paragraph (h)(1) of this section:

(i) During the certification process and upon a manufacturer's request, EPA will consider allowing the use of an on-board diagnostic system (as required by § 86.1717), that functions properly on low sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) Upon a manufacturer's request, if vehicles exhibit sulfur-induced MIL illuminations due to high sulfur gasoline, EPA will consider allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur-induced MIL.

(iii) Upon a manufacturer's request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur from currently available gasoline, EPA will consider allowing such procedures on a case-by-case basis.

(i) *Conditions allowing manufacturer opt-outs—OTC state or manufacturer opts out.* A covered manufacturer may opt out of National LEV if a covered state or another covered manufacturer opts out of the National LEV program pursuant to this section.

(1) If a covered manufacturer's opt-out under § 86.1707(i) is based on a covered state or covered manufacturer's opt-out under paragraph (e), (g), (h), (i), (j) or (k) of this section, the manufacturer may opt out within 90 calendar days of EPA's receipt of the underlying state or manufacturer's opt-out notification. If a manufacturer's opt-out under § 86.1707(i) is based on a manufacturer's opt-out under paragraph (d) of this section, the manufacturer may opt out within 90 calendar days of the date of either an EPA finding or a judicial ruling that the opt-out under paragraph (d) of this section is valid. If a manufacturer's opt-out under § 86.1707(i) is based on a manufacturer's opt-out under paragraph (f) of this section, the manufacturer may opt out within 90 days of the expiration of the condition required by paragraph (f) of this section, or within 90 calendar days of EPA's receipt of the underlying state or manufacturer's opt-out notification, whichever is later. An opt-out under § 86.1707(i) may be effective no earlier than the model year named for the calendar year following the calendar year in which the manufacturer sends its opt-out notification to EPA.

(2) Upon the effective date of a manufacturer's opt-out based on this opt-out condition, in any covered state that manufacturer shall be subject to all provisions that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and requirements promulgated under title II of the Clean Air Act and any state standards in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that has been in place at least two years as of the effective date of a manufacturer's opt-out, a manufacturer waives its right under section 177 of the Clean Air Act to two years of lead time to the extent that the effective date of its opt-out provides for less than two years of lead time and to the extent such a waiver is necessary. With respect to ZEV Mandates, the manufacturer will not be deemed to have waived its two-year lead time under section 177 of the Clean Air Act, which shall run from the date of EPA's receipt of the manufacturer's opt-out notice.

(3) If a covered manufacturer opts out based on this condition, any covered state that is not a violating state under paragraph (e), (f) or (g) of this section may opt out within 90 calendar days of EPA's receipt of the manufacturer's opt-out notification. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(4) In non-violating states that have not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(5) In a non-violating state that opts out pursuant to paragraph (i)(3) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of the non-violating state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(j) *Conditions allowing OTC state opt-outs—change to Stable Standards.* Any covered state may opt out of National LEV if EPA promulgates a final rule or other final agency action revising a standard or requirement listed in paragraph (d)(9)(i) of this section, and, had the revised standard or requirement been included at the time, it would have changed EPA's [date of signature of final rule] determination (''initial determination'') that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177 Programs that would apply in the absence of National LEV.

(1) If EPA promulgates a final rule or other final agency action revising a standard or requirement listed in paragraph (d)(9)(i) of this section, a covered state may request in writing that EPA reevaluate, using the revised standard or requirement, its initial determination that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177

Programs that would be operative in the absence of National LEV. Within 180 days of receipt of the state's request, EPA must take final agency action to determine whether the revision would have changed EPA's initial determination. These EPA determinations are not rules, but are nationally applicable final agency actions subject to judicial review pursuant to section 307(b) of the Clean Air Act (42 U.S.C. 7607(b)). In reevaluating its determination regarding the relative emission benefits of National LEV, EPA shall use the same Mobile emission factor model and the same inputs and assumptions as used in the initial determination, with the following exceptions:

(i) In modeling the emission reductions from National LEV, EPA must use the revised standard or requirement in place of the standard or requirement as it existed when EPA made its initial determination; and

(ii) In modeling the emissions reductions that would be achieved through the OTC State Section 177 Programs that would apply in the absence of National LEV, EPA shall take into account all Section 177 Programs adopted by OTC States (including programs that allow National LEV as a compliance alternative) that had been adopted subsequent to EPA's initial determination. In accounting for the emissions effect of OTC State Section 177 Programs, EPA shall continue to assume that all OTC State Section 177 Programs have the same substantive requirements used in EPA's initial determination and shall not model any effects of state regulation of medium-duty vehicles (as defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, Section 1900).

(2) A covered state may opt out of National LEV within 90 days of a final EPA determination pursuant to paragraph (j)(1) of this section that a revision to a standard or requirement listed in paragraph (d)(9)(i) of this section, if it had been included at the time, would have changed EPA's initial determination that National LEV would produce emissions reductions at least equivalent to the OTC State Section 177 Programs that would be operative in the absence of National LEV. The state's opt-out notification shall specify an effective date for the state's opt-out that may not provide for less than the two-years lead-time required under section 177 of the Clean Air Act (running from the date of EPA's receipt of the state's opt-out notification).

(3) If a covered state opts out based on this condition, a covered manufacturer may opt out of National LEV pursuant to § 86.1707(i).

(4) In a state that opts out pursuant to paragraph (j)(1) of this section, obligations under National LEV shall be unaffected for covered manufacturers until the effective date of that state's opt-out. Upon the effective date of the state's opt-out, in that state covered manufacturers shall comply with any state standards in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all provisions that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

7. Section 86.1708–97 is redesignated as § 86.1708–99 and amended by revising the section heading, by redesignating Tables R97–1 through R97–7 as Tables R99–1 through R99–7, by revising the references ''R97–1'', ''R97–2'', ''R97–3'', ''R97–4'', ''R97–5'', ''R97–6'', and ''R97–7'' to read ''R99–1'', ''R99–2'', ''R99–3'', ''R99–4'', ''R99–5'', ''R99–6'', and ''R99–7'', respectively, wherever they appear in the section, and by adding paragraph (e) to read as follows:

§ 86.1708–99 Exhaust emission standards for 1999 and later light-duty vehicles.

* * * * *

(e) *SFTP Standards.* Exhaust emission standards from 2001 and later model year light-duty vehicles shall meet the additional SFTP standards in this paragraph (e) according to the implementation schedules in this paragraph (e). The standards set forth in this paragraph (e) refer to exhaust emissions emitted over the Supplemental Federal Test Procedure (SFTP) as set forth in subpart B of this part and collected and calculated in accordance with those procedures.

(1) *Tier 1 vehicles and TLEVs.* The SFTP exhaust emission levels from new 2001 and subsequent model year light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions and light-duty vehicles certified as TLEVs shall not exceed the standards in Table R99–7.1, according to the implementation schedule in paragraph (e)(1)(i) of this section.

TABLE R99–7.1—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR TIER 1 VEHICLES AND TLEVS

Useful life	Fuel type	NMHC + NO_X composite	CO		
			A/C test	US06 test	Composite option
Intermediate	Gasoline	0.65	3.0	9.0	3.4
	Diesel	1.48	NA	9.0	3.4
Full	Gasoline	0.91	3.7	11.1	4.2
	Diesel	2.07	NA	11.1	4.2

(i) *Phase-in requirements.* For the purposes of this paragraph (e)(1) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles certified to the exhaust emission standards in § 86.099–8(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and certified as TLEVs sold in the United States. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85

Model year	Percentage
2004 and subsequent	100

(B) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(2) *LEVs and ULEVs.* The SFTP standards in this paragraph (e)(2) represent the maximum SFTP exhaust emissions at 4,000 miles +/− 250 miles or at the mileage determined by the manufacturer for emission data vehicles in accordance with § 86.1726. The SFTP exhaust emission levels from new 2001 and subsequent model year light-duty vehicle LEVs and ULEVs shall not exceed the standards in the following table, according to the implementation schedule in paragraph (e)(2)(i) of this section:

TABLE R99–7.2.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR LEVS AND ULEVS

US06 test	A/C test		
NMHC + NO_x	CO	NMHC + NO_x	CO
0.14	8.0	0.20	2.7

(i) *Phase-in requirements.* For the purposes of this paragraph (e)(2) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85
2004 and subsequent	100

(B) Manufacturers may use an ''Alternative or Equivalent Phase-in Schedule'' to comply with the phase-in requirements. An ''Alternative Phase-in'' is one that achieves at least equivalent emission reductions by the end of the last model year of the scheduled phase-in. Model-year emission reductions shall be calculated by multiplying the percent of vehicles (based on the manufacturer's projected California sales volume of the applicable vehicle fleet) meeting the new requirements per model year by the number of model years implemented prior to and including the last model year of the scheduled phase-in. The ''cumulative total'' is the summation of the model-year emission reductions (e.g., a four model-year 25/50/85/100 percent phase-in schedule would be calculated as: (25%*4 years) + (50%*3 years) + (85%*2 years) + (100%*1 year) = 520). Any alternative phase-in that results in an equal or larger cumulative total than the required cumulative total by the end of the last model year of the scheduled phase-in shall be considered acceptable by the Administrator under the following conditions: All vehicles subject to the phase-in shall comply with the respective requirements in the last model year of the required phase-in schedule; and if a manufacturer uses the optional phase-in percentage determination in paragraph (e)(1)(i) of this section, the cumulative total of model-year emission reductions as determined only for light-duty vehicles and light light-duty trucks certified to this paragraph (e)(2) must also be equal to or larger than the required cumulative total by end of the 2004 model year. Manufacturers shall be allowed to include vehicles introduced before the first model year of the scheduled phase-in (e.g., in the previous example, 10 percent introduced one year before the scheduled phase-in begins would be calculated as: (10%*5 years) and added to the cumulative total).

(C) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(3) *A/C-on specific calibrations.* A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters). Such calibrations must not unnecessarily reduce the NMHC+NO_X emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use. If reductions in control system NMHC+NO_X effectiveness do occur as a result of such calibrations, the manufacturer shall, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness. A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. With these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters shall use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, ''closed-loop biasing,'' defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy. In addition, ''transient'' air-fuel enrichment strategy (or ''tip-in'' and ''tip-out'' enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy.

(4) *''Lean-on-cruise'' calibration strategies.* ''Lean-on-cruise'' air-fuel calibration strategies shall not be employed during vehicle operation in

normal driving conditions, unless such strategies are also substantially employed during the SFTP. A ''lean-on-cruise'' air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph, for the purposes of improving fuel economy or other purposes. A/C-on ''lean-on-cruise'' strategies which differ from A/C-off ''lean-on-cruise'' strategies for a given engine operating condition (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters) shall not be used.

(5) *Applicability to alternative fuel vehicles.* These SFTP standards do not apply to vehicles certified on fuels other than gasoline and diesel fuel, but the standards do apply to the gasoline and diesel fuel operation of flexible-fuel vehicles and dual-fuel vehicles.

(6) *Single-roll electric dynamometer requirement.* For all vehicles certified to the SFTP standards, a single-roll electric dynamometer or a dynamometer which produces equivalent results, as set forth in § 86.108, must be used for all types of emission testing to determine compliance with the associated emission standards.

8. Section 86.1709–97 is redesignated as § 86.1709–99 and amended by revising the section heading, by redesignating Tables R97–8 through R97–14 as Tables R99–8 through R99–14, by revising the references ''R97–8'', ''R97–9'', ''R97–10'', ''R97–11'', ''R97–12'', ''R97–13'', and ''R97–14'' to read ''R99–8'', ''R99–9'', ''R99–10'', ''R99–11'', ''R99–12'', ''R99–13'', and ''R99–14'', respectively, wherever they appear in the section, and by adding paragraph (e) to read as follows:

§ 86.1709–99 Exhaust emission standards for 1999 and later light light-duty trucks.

* * * * *

(e) *SFTP Standards.* Exhaust emission standards from 2001 and later model year light light-duty trucks shall meet the additional SFTP standards in this paragraph (e) according to the implementation schedules in this paragraph (e). The standards set forth in this paragraph (e) refer to exhaust emissions emitted over the Supplemental Federal Test Procedure (SFTP) as set forth in subpart B of this part and collected and calculated in accordance with those procedures.

(1) *Tier 1 vehicles and TLEVs.* The SFTP exhaust emission levels from new 2001 and subsequent model year light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified as TLEVs shall not exceed the standards in Table R99–14.1, according to the implementation schedule in paragraph (e)(1)(i) of this section.

TABLE R99–14.1.—SFTP EXHAUST EMISSION STANDARDS (G/MIL) FOR TIER 1 VEHICLES AND TLEVS

Useful life	Fuel type	LVW (lbs)	NMHC+NO_X composite	CO		
				A/C test	US06 test	Composite option
Intermediate	Gasoline	0–3750	0.65	3.0	9.0	3.4
		3751–5750	1.02	3.9	11.6	4.4
	Diesel	0–3750	1.48	NA	9.0	3.4
		3751–5750	NA	NA	NA	NA
Full	Gasoline	0–3750	0.91	3.7	11.1	4.2
		3751–5750	1.37	4.9	14.6	5.5
	Diesel	0–3750	2.07	NA	11.1	4.2
		3751–5750	NA	NA	NA	NA

(i) *Phase-in requirements.* For the purposes of paragraph (e)(1) of this section only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles certified to the exhaust emission standards in § 86.099-8(a)(1)(i) and subsequent model year provisions and light light-duty trucks certified to the exhaust emission standards in § 86.099–9(a)(1)(i) and subsequent model year provisions and certified as TLEVs sold in the United States. As an option, a manufacturer may elect to have its total light-duty vehicle and light light-duty truck fleet defined, for the purposes of this paragraph (e)(1) only, as the total projected number of the manufacturer's light-duty vehicles and light light-duty trucks, other than zero emission vehicles, certified and sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85
2004 and subsequent	100

(B) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(2) *LEVs and ULEVs.* The SFTP standards in this paragraph (e)(2) represent the maximum SFTP exhaust emissions at 4,000 miles +/− 250 miles or at the mileage determined by the manufacturer for emission data vehicles in accordance with § 86.1726. The SFTP exhaust emission levels from new 2001 and subsequent model year light light-duty truck LEVs and ULEVs shall not exceed the standards in the following table, according to the implementation schedule in paragraph (e)(2)(i) of this section:

TABLE R99–14.2.—SFTP EXHAUST EMISSION STANDARDS (G/MI) FOR LEVS AND ULEVS

US06 test		A/C test	
NMHC + NO_X	CO	NMHC + NO_x	CO
0.14	8.0	0.20	2.7

(i) *Phase-in requirements.* For the purposes of this paragraph (e)(2) only, each manufacturer's light-duty vehicle and light light-duty truck fleet shall be defined as the total projected number of light-duty vehicles and light light-duty trucks certified as LEVs and ULEVs sold in the United States.

(A) Manufacturers of light-duty vehicles and light light-duty trucks, except low volume manufacturers, shall certify a minimum percentage of their light-duty vehicle and light light-duty truck fleet according to the following phase-in schedule:

Model year	Percentage
2001	25
2002	50
2003	85
2004 and subsequent	100

(B) Manufacturers may use an ''Alternative or Equivalent Phase-in Schedule'' to comply with the phase-in requirements. An ''Alternative Phase-in'' is one that achieves at least equivalent emission reductions by the end of the last model year of the scheduled phase-in. Model-year emission reductions shall be calculated by multiplying the percent of vehicles (based on the manufacturer's projected California sales volume of the applicable vehicle fleet) meeting the new requirements per model year by the number of model years implemented prior to and including the last model year of the scheduled phase-in. The ''cumulative total'' is the summation of the model-year emission reductions (e.g., a four model-year 25/50/85/100 percent phase-in schedule would be calculated as: (25%*4 years) + (50%*3 years) + (85%*2 years) + (100%*1 year) = 520). Any alternative phase-in that results in an equal or larger cumulative total than the required cumulative total by the end of the last model year of the scheduled phase-in shall be considered acceptable by the Administrator under the following conditions: All vehicles subject to the phase-in shall comply with the respective requirements in the last model year of the required phase-in schedule; and if a manufacturer uses the optional phase-in percentage determination in paragraph (e)(1)(i) of this section, the cumulative total of model-year emission reductions as determined only for light-duty vehicles and light light-duty trucks certified to this paragraph (e)(2) must also be equal to or larger than the required cumulative total by the end of the 2004 model year. Manufacturers shall be allowed to include vehicles introduced before the first model year of the scheduled phase-in (e.g., in the previous example, 10 percent introduced one year before the scheduled phase-in begins would be calculated as: (10%*5 years) and added to the cumulative total).

(C) Low volume manufacturers of light-duty vehicles and light light-duty trucks shall certify 100 percent of their light-duty vehicle and light light-duty truck fleet in the 2004 and subsequent model years.

(ii) [Reserved]

(3) *A/C-on specific calibrations.* A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters). Such calibrations must not unnecessarily reduce the NMHC+NO_X emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use. If reductions in control system NMHC+NO_X effectiveness do occur as a result of such calibrations, the manufacturer shall, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness. A/C-on specific ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies (as defined below), which differ from A/C-off ''open-loop'' or ''commanded enrichment'' air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. With these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters shall use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. ''Open-loop'' or ''commanded'' air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, ''closed-loop biasing,'' defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy. In addition, ''transient'' air-fuel enrichment strategy (or ''tip-in'' and ''tip-out'' enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, shall not be considered an ''open-loop'' or ''commanded'' air-fuel enrichment strategy.

(4) *''Lean-on-cruise'' calibration strategies.* ''Lean-on-cruise'' air-fuel calibration strategies shall not be employed during vehicle operation in normal driving conditions, unless such strategies are also substantially employed during the SFTP. A ''lean-on-cruise'' air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph, for the purposes of improving fuel economy or other purposes. A/C-on ''lean-on-cruise'' strategies which differ from A/C-off ''lean-on-cruise'' strategies for a given engine operating condition (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters) shall not be used.

(5) *Applicability to alternative fuel vehicles.* These SFTP standards do not apply to vehicles certified on fuels other than gasoline and diesel fuel, but the standards do apply to the gasoline and diesel fuel operation of flexible-fuel vehicles and dual-fuel vehicles.

(6) *Single-roll electric dynamometer requirement.* For all vehicles certified to the SFTP standards, a single-roll electric dynamometer or a dynamometer which produces equivalent results, as set forth in § 86.108, must be used for all types

of emission testing to determine compliance with the associated emission standards.

[FR Doc. 97–21138 Filed 8–21–96; 8:45 am]

BILLING CODE 6560–50–U