

carbon monoxide from mobile sources, dated November 15, 1992 and November 21, 1994 submitted by the New Jersey State Department of Environmental Protection (NJDEP).  
 (i) Incorporation by reference.  
 (A) Chapter 27, Title 7 of the New Jersey Administrative Code Subchapter

18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)," effective March 15, 1993.  
 (ii) Additional material.

(A) November 21, 1994, Technical update to the New Jersey Carbon Monoxide SIP.

3. In § 52.1605 the table is amended by removing the first entry for Title 7, Chapter 27: Subchapter 18 and revising the second entry to read as follows:

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

State regulation	State effective date	EPA approved date	Comments
* * Title 7, Chapter 27	*	*	*
* Subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)."	Mar. 15, 1993	July 25, 1996	See July 25, 1996 for items not included in this limited approval.
* * * * *	*	*	*

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 BILLING CODE 6560-50-P

**40 CFR Part 52**

[Region II Docket No. 151; SIPTRAX NY12-2-6920, FRL-5524-5]

**Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan for Carbon Monoxide; Determination of Length of Control Period for New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area**

**AGENCY:** Environmental Protection Agency.  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the approval of portions of a request by the State of New York to revise its State Implementation Plan for Carbon Monoxide. EPA is approving New York's carbon monoxide plan which includes a vehicle miles travelled forecast, carbon monoxide emission inventory, multi-state coordination commitment, and Downtown Brooklyn Master Plan. EPA is also approving the State's use of the wintertime gasoline volatility program as a contingency measure. In addition, EPA is partially approving the State's oxygenated fuels rule. EPA will be taking action on New York's attainment demonstration, revised new source review program, conformity rules, and enhanced vehicle inspection and maintenance program in a separate Federal Register action.

These revisions were required by the Clean Air Act as amended in 1990 and will contribute towards attaining the carbon monoxide standard. EPA is also

determining that the period prone to high ambient concentrations of carbon monoxide in the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area extends for the four month period from November 1 through the last day of February. This is the control period for carbon monoxide when State programs in this area must require oxygenated gasoline.  
**EFFECTIVE DATE:** This action is effective August 26, 1996.

**ADDRESSES:** Copies of New York's submittals are available at the following addresses for inspection during normal business hours:

- Environmental Protection Agency, Region II Office, Library, 16th Floor, 290 Broadway, New York, New York 10007-1866.
- New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.
- Environmental Protection Agency, Air and Radiation Docket and Information Center (Air Docket 6102), 401 M Street, S.W., Washington, D.C. 20460.

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

**SUPPLEMENTARY INFORMATION:**  
 Background

The Clean Air Act, as amended in 1990, sets forth in Title I a number of requirements applicable to areas designated as moderate nonattainment for carbon monoxide (CO). Among these

is the requirement that by November 15, 1992 the State Implementation Plans (SIP) for such areas be revised to include the following: an attainment demonstration, an enhanced vehicle emission inspection and maintenance (I/M) program, an oxygenated fuels rule, a vehicle miles travelled forecast, contingency measures, a CO emission inventory, a revised new source review program, and a multi-state coordination letter.

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

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

The New York portion of the New York-Northern New Jersey-Long Island CO nonattainment area is classified as a moderate 2 area (an area that has a design value of 12.8-16.4 ppm). This area, which is part of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area (CMSA), includes the Counties of Bronx, Kings, New York, Queens,

Richmond, Nassau, and Westchester. The remainder of New York State is in attainment for CO.

EPA proposed approval of most provisions of the State's submission on September 15, 1995 (60 FR 47911). The reader is referred to the proposal for a detailed discussion of EPA's action. Comments were due by October 15, 1995. The State of New York was the only commenter.

In its proposal to approve revisions to the New York SIP for CO, EPA also proposed to determine that the period prone to high ambient concentrations of CO, and thus the control period when oxygenated gasoline is required for the New York-Northern New Jersey-Long Island CMSA, extends from November 1 to the last day of February. Consequently, EPA proposed to approve New York's oxygenated gasoline requirement only for that four month period because anything beyond the control period required by section 211(m) of the Clean Air Act is preempted under 211(c)(4), due to the reformulated gasoline oxygen content requirements applicable in this area.

On February 12, 1996, EPA published (61 FR 5363) a Solicitation of Comment action regarding the proposed determination to set a four month control period for the New York-Northern New Jersey-Long Island CMSA. This action solicited comment on the limited issue of some additional information with regard to emissions modeling and data for the New Jersey portion of the area. The New York Mercantile Exchange was the only commenter on this action.

#### Public Comment

New York's comments on the New York SIP Federal Register concerned EPA's proposed action on the State's attainment demonstration, I/M program, oxygenated fuels rule, and contingency measures. For a detailed discussion of these comments, the reader is referred to the "New York Carbon Monoxide State Implementation Plan Technical Support Document (TSD), September 1, 1995 and amended February 28, 1996." The comments are summarized as follows:

1. New York urges EPA to grant full approval to the State's CO attainment demonstration because the State has devoted substantial resources to developing it. The principle steps the State used include:

1. Ranking and selection of the "worst case" intersections
2. Selection of an air quality model
3. Selection of a background concentration
4. Selection of the temperature to use in the model

#### 5. Modeling

#### 6. Summary of modeling results

These steps are described in more detail in the TSD accompanying this rule. In general, New York's model shows that the area reaches attainment of the CO NAAQS when credit for implementing an enhanced I/M program is considered. However, the State does not, at this time, have a fully adopted and submitted I/M program. Accordingly, contrary to the commenter's suggestion, EPA is precluded from granting a full approval to the attainment demonstration.

EPA is not taking action at this time on the State's attainment demonstration.

2. In its Federal Register action, EPA proposed not to approve section 225-3.8 of New York's gasoline regulation. This section allows the State to grant waivers to the regulation's summertime Reid Vapor Pressure (RVP) limitations. In its comments, New York states that it believes this section should be approved along with the rest of the State's oxygenated gasoline rule, noting that the provision has no bearing on New York's wintertime oxygenated gasoline program.

While EPA agrees that the summertime RVP controls are not a part of the oxygenated gasoline requirements, New York is requesting EPA to approve those RVP controls as part of its federally enforceable SIP. This requires EPA to evaluate whether those provisions are approvable as a revision to New York's SIP. For the reasons stated in its proposed rulemaking, EPA continues to believe that it would be inappropriate to approve the State's waiver provisions for the RVP requirement given that the State controls are otherwise identical to the Federal controls, which the State has no power to waive.

3. New York also commented on the fact that EPA did not propose to approve section 225-3.9(a), which would allow the State to grant waivers of the oxygenated gasoline requirements due to shortages in supply. It believes that the discretion to grant variances should be part of the State's responsibilities for administering the program, and that it would take EPA too long to authorize these types of waivers through the SIP process.

As discussed more fully in the proposal, EPA has identified specific circumstances under which EPA may approve a narrow state variance provision that would allow the State to grant waivers and which would be consistent with the applicable statutory requirements. Since the New York submission does not provide that any

increased emissions due to a waiver would subsequently be made up, EPA cannot approve the submitted waiver provision because EPA would have no assurance that such waivers would not violate the requirement of section 110(l) by potentially exempting sources from the requirements of the Clean Air Act.

Absent approval of the waiver provision, EPA would have to evaluate in each individual case whether a waiver would be consistent with the statutory requirements. EPA will attempt to address these issues in a timely fashion. Furthermore, if the State elects to revise its waiver provision to include the necessary assurance that emissions would be made up, EPA would make every effort to revise the SIP quickly to include the waiver provision.

4. New York commented that it believes that, although its employee commute option program (ECO) submittal must meet certain specific requirements as an ozone SIP element, the submittal should be approved as an adequate CO contingency measure at this time.

EPA expects the ECO program to be subject to change by New York State. It is expected that this will then be submitted to EPA as part of the ozone SIP. EPA sees no need to reduce the flexibility available to the State in revising its ECO plan by approving it now as a contingency CO control measure.

EPA received no negative comments on its proposal to determine that the period prone to high ambient concentrations of CO for the New York-Northern New Jersey-Long Island CMSA extends from November 1 through the last day of February, either on the proposed rulemaking for the New York CO SIP or the additional Solicitation of Comment (61 FR 5363). The New York Mercantile Exchange raised concerns on issues outside the scope of this rulemaking, but strongly supported EPA finalizing the proposed determination of the control period. Thus, EPA is hereby determining that the period prone to high ambient concentrations of CO extends from November 1 through the last day of February. EPA is also approving New York's oxygenated fuel requirement for only those four of the seven months provided in New York's submission.

This action of determining that the control period for the New York-Northern New Jersey-Long Island CMSA is the four month period from November through February has the effect of converting EPA's limited approval of the four month portion of New Jersey's oxygenated gasoline SIP submission

into a full approval of that part. The reader is referred to the New Jersey notice (61 FR 5299) for further details.

#### Elements of the SIP Being Fully Approved

##### *Vehicle Miles Travelled Forecast*

The New York SIP is required under section 187(a)(2)(A) of the Clean Air Act to include a forecast of vehicle miles travelled through the year 1995. In addition, annual reports on the accuracy of the forecast and estimates of actual vehicle miles travelled and annual updates of the forecasts are required of the State; the first of these was required by September 30, 1994. EPA finds that New York has submitted documentation satisfying these requirements and, therefore, is approving New York's vehicle miles travelled forecast SIP revision.

##### *Carbon Monoxide Emission Inventory*

The New York SIP is required under section 187(a)(1) and as described in section 172(c)(3) of the Clean Air Act to include a comprehensive, actual inventory of all CO emission sources in the nonattainment areas. EPA proposed to approve the CO inventory, and no comments on this proposal were received. For the reasons described more fully in the TSD, EPA is approving New York's 1990 base year emission inventory for CO.

##### *Multi-State Coordination*

The New York SIP is required under section 187(e) of the Clean Air Act to include a joint workplan to demonstrate early cooperation and integration of all states in the nonattainment area. This workplan consisted of a letter signed by former Director Thomas M. Allen containing a detailed schedule of milestones and a commitment to coordinate with EPA and each of the states involved. EPA proposed to approve the joint workplan, and no comments on this proposal were received. EPA finds that New York has fulfilled this requirement and approves New York's multi-state coordination commitment.

##### *Contingency Measures*

The New York SIP is required under section 187(a)(3) of the Clean Air Act to include adopted contingency measures in the event the State fails to attain the national ambient air quality standards by the required date or if any estimate of vehicle miles travelled contained in an annual report required by section 187(a)(2) exceeds the number predicted in the most recent prior forecast. In a January 1992 guidance document entitled "Section 187 VMT Forecasting

and Tracking Guidance," EPA discussed what it considers to be the allowable limit of an exceedance after which contingency measures must take effect without further action by the State or EPA. EPA proposed to approve, as a contingency measure, the State's wintertime gasoline volatility program, and no comments on this proposal were received. Thus, EPA approves, as a contingency measure, the State's wintertime gasoline volatility program as an adequate contingency measure should New York fail to attain the CO standard or exceed the vehicle miles travelled forecast.

##### *Downtown Brooklyn Master Plan*

On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area. EPA is approving this plan as a revision to the SIP.

#### Elements of the SIP Being Partially Approved

##### *Oxygenated Fuels Rule*

The New York SIP is required under section 211(m) of the Clean Air Act to include an oxygenated gasoline program which requires gasoline for the State's specified control areas to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of CO. EPA is approving that part of New York's Subpart 225-3, "Fuel Composition and Use—Gasoline (oxygenated gasoline program) which meets the requirements of the Clean Air Act and which was part of its November 13, 1992, SIP submittal. As discussed earlier and in its proposed rulemaking, EPA is approving New York's program only for the four months when the area is prone to higher ambient concentrations of CO, which is the control period required by section 211(m) of the Clean Air Act. EPA is also not approving sections 225-3.8 and 225-3.9(a), which deal with State gasoline waiver provisions, as discussed earlier. Although EPA is not approving a portion of the State's regulation, EPA has determined that the approved provisions fully meet the requirements of section 211(m) of the Clean Air Act.

#### Further Actions

EPA will be taking action on New York's I/M program, attainment demonstration, revised new source review program, and conformity rules in future Federal Register actions. New York is in the process of revising its I/M program. Once this revision is

submitted as a SIP revision and approved by EPA, EPA will take action on the I/M program and the attainment demonstration which relies on credit from the I/M program.

#### Conclusion

EPA is fully approving New York's vehicle miles travelled forecast, CO emission inventory, multi-state coordination commitment, and Downtown Brooklyn Master Plan, as revisions to New York's CO SIP. In addition, the State's wintertime gasoline volatility program is being approved as a contingency measure. EPA is approving portions of New York's Subpart 225-3, "Fuel Composition and Use—Gasoline," regulation as fully meeting the oxygenated fuels requirement of section 211(m) of the Clean Air Act.

This action is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR Part 51.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

Through submission of this SIP or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 187 of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to

the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated annual costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of

1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 31, 1996.

William J. Muszynski,  
*Acting Regional Administrator.*

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

**PART 52—[AMENDED]**

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

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

**Subpart HH—New York**

2. Section 52.1670 is amended by adding new paragraph (c)(89) to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*  
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(89) Revisions to the New York State Implementation Plan (SIP) for carbon monoxide concerning the control of carbon monoxide from mobile sources, dated November 13, 1992 and March 21, 1994 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference.

(A) Subpart 225-3 of Title 6 of the New York Code of Rules and Regulations of the State of New York, entitled "Fuel Composition and Use—Gasoline," effective September 2, 1993 (as limited in section 1679).

(ii) Additional material.

(A) March 21, 1994, Update to the New York Carbon Monoxide SIP.

3. Section 52.1679 is amended by removing the existing entry for Subpart 225-3 and adding a new entry for Subpart 225-3 in numerical order to read as follows:

**§ 52.1679 EPA—approved New York State regulations.**

New York State regulation	State effective date	Latest EPA approval date	Comments
* * *			
Subpart 225-3, Fuel Composition and Use— Gasoline.	9/2/93	[insert date of publication and FR page citation].	Section 225-3.4 applicable November 1 through last day of February. Variances adopted by the State pursuant to sections 225-3.8 and 225-3.9(a) become applicable only if approved by EPA as SIP revisions.
* * *			

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**40 CFR Part 52**

[WA47-7120a; FRL-5538-3]

**Clean Air Act Approval and Promulgation of Carbon Monoxide Implementation Plan for the State of Washington: Puget Sound Attainment Demonstration**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the attainment demonstration portion of the Puget Sound carbon monoxide (CO) State implementation plan (SIP) revision submitted on September 30, 1994, by the State of Washington

Department of Ecology (Washington) for the purpose of documenting attainment of the national ambient air quality standards (NAAQS) for CO. The implementation plan revision was submitted by the State to satisfy certain federal requirements for an approvable nonattainment area CO SIP for the Puget Sound nonattainment area in the State of Washington. The rationale for the approval is set forth in this notice. Additional information is available at the address indicated below. Under the Clean Air Act (CAA), EPA must approve or disapprove SIPs or portions of SIPs within time frames specified in the CAA; failure to do so would render EPA liable to citizen suits to conduct rulemaking on those SIPs and would

delay making approvable rules federally enforceable.

**DATES:** This action is effective on September 23, 1996 unless adverse or critical comments are received by August 26, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ-107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.