and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 1999. Filing a petition for reconsideration by the Administrator of this conditional interim final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 23, 1998.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, *Chapter I, Title 40 of the Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(113) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(113) The Texas Natural Resource Conservation Commission submitted a revision to the State Implementation Plan (SIP) on August 9, 1996. This revision contained, among other things, 15% Rate-of-Progress plans for the Dallas/Fort Worth, El Paso and Houston/Galveston ozone nonattainment areas which will aid in ensuring the attainment of the National Ambient Air Quality Standards for ozone. This submittal also contained revisions to the 1990 base year emissions inventories, the associated Motor Vehicle Emission Budgets and contingency plans.

(i) Incorporation by reference. Texas Natural Resource Conservation Commission (TNRCC) order adopting amendments to the SIP; Docket Number 96–0465–SIP, issued July 31, 1996.

(ii) Additional material.

(A) TNRCC certification letter dated July 24, 1996, and signed by Gloria Vasquez, Chief Clerk, TNRCC.

(B) The SIP narrative plan and tables dated July 24, 1996 entitled, ''Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution,'' as it applies to the Dallas/Fort Worth, El Paso and Houston areas' 15% Rate-of-Progress plans, emissions inventories, motor vehicle emissions budgets and contingency plans.

* * * * *

3. Section 52.2309 is amended by adding paragraph (e) to read as follows:

§ 52.2309 Emissions inventories.

* * * * *

(e) The Texas Natural Resource Conservation Commission submitted a revision to the State Implementation Plan (SIP) on August 9, 1996. This revision was submitted for the purpose of satisfying the 15% Rate-of-Progress requirements of the Clean Air Act, which will aid in ensuring the attainment of the National Ambient Air Quality Standards for ozone. This submittal also contained revisions to the 1990 base year emissions inventories for the Dallas/Fort Worth, El Paso and Houston/Galveston areas.

[FR Doc. 98–29812 Filed 11–9–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ29–2–185 FRL–6174–4]

Approval and Promulgation of Implementation Plans; State of New Jersey; Clean Fuel Fleet Opt Out

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan revision submitted by the State of New Jersey for the purpose of meeting the requirement to submit the federal Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act (Act or CAA). EPA is approving the State's plan for implementing a substitute program to opt out of the federal CFFP.

EFFECTIVE DATE: This rule will be effective December 10, 1998.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires states containing areas designated as severe ozone nonattainment areas, including New Jersey, to submit for EPA approval a state implementation plan (SIP) revision that includes measures to implement the federal Clean Fuel Fleet program (CFFP). Under this program, a specified percentage of vehicles purchased by covered fleet operators must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as having 10 or more vehicles that are centrally fueled or capable of being centrally fueled. A CFFP meeting federal requirements would be a state-enforced program which requires covered fleets to assure that an annually increasing percentage of new vehicle purchases are certified clean vehicles. In New Jersey, the program would apply in the State's portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and in New Jersey's portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area; thus all counties in New Jersey except for Warren, Atlantic and Cape May Counties would be covered under the federal CFFP.

The federal CFFP is divided into two components. The first component is a light duty federal CFFP which applies to covered fleets of passenger cars and trucks of gross vehicle weight rating (GVWR) of 6,000 pounds and less, and trucks between 6,000 and 8,500 pounds GVWR. Covered fleets which fall under the light duty federal CFFP are required

to assure that 30 percent of new purchases are clean vehicles in the first year of the program, 50 percent in the second year and 70 percent in the third and subsequent years.

The second component is a heavy duty (HD) federal CFFP which applies to covered fleets of trucks over 8,500 pounds GVWR and below 26,000 pounds GVWR. The HD federal CFFP requires that 50 percent of covered fleets' new purchases be clean fueled vehicles in the first and subsequent years.

Under the federal CFFP, the vehicle exhaust emission standards for light duty vehicles are equivalent to those established by the California Air Resources Board (CARB) as light duty low emission vehicles (LEVs), for use in the California LEV program. In addition to LEVs, this certification exists for vehicles meeting four additional levels of emissions stringency, including zero emission vehicles (ZEVs). For further information regarding emission standards associated with all of the clean fuel vehicles which are applicable under the LEV program and the federal CFFP, the reader is referred to the federal CFFP final rule, published on March 1, 1993 at 58 FR 11888.

Section 182(c)(4)(B) of the Act allows states to ''opt out'' of the federal CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the federal CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the federal CFFP or the portion of the federal CFFP for which the measure is to be substituted.

On February 15, 1996 New Jersey submitted its New Jersey Clean Fleets (NJCF) program as a substitute for the federal CFFP. This submittal, comprising the State's federal CFFP substitute which EPA is now taking action to approve, was in addition to prior federal CFFP-related submittals of November 1992 and May 1994. The reader is referred to EPA's proposed approval of the NJCF program, published at 62 FR 61948 on November 20, 1997 for further detail on those previous submittals. The NJCF program is an essentially voluntary mix of incentive-based programs which are intended to spur public and private fleets within New Jersey to purchase clean, alternatively fueled vehicles (AFVs).

On March 29, 1996, and on March 6, 1997, New Jersey supplemented the federal CFFP SIP revision with (1) a clarifying letter from New Jersey Department of Environmental Protection (NJDEP) Commissioner Shinn, and (2) with material from its October 21, 1996 public hearing, respectively. The 1996 letter from Commissioner Shinn clarified that the NJCF program substitution includes, to the extent necessary to meet SIP obligations, New Jersey's LEV program (NJ LEV) which had been adopted by that time. Because the emissions reductions relied upon in the NJCF program will largely result from voluntary measures, the NJ LEV program essentially serves the role of a ''backstop'' to the NJCF program. This means that in the event the NJCF program fails to achieve the emissions reductions claimed by the State, emission reductions achieved with the separate LEV program will be used by the State to account for those reductions that would have originally been realized through the federal CFFP. In that event EPA would then recognize NJ LEV as the effective opt out measure.

Unlike the federal CFFP, NJ LEV will impose requirements on auto manufacturers and their yearly vehicle sales. The adopted NJ LEV regulation states that New Jersey's primary intention is to participate in the National LEV (NLEV) program (discussed in more detail in section III. C. of this notice) as the preferred means of achieving cleaner vehicle sales throughout the State. The NJ LEV regulation also states that New Jersey would operate its own California LEV program if the NLEV program ultimately was not implemented (the reader is referred to the NJCF proposal at 62 FR 61948 for details regarding California LEV as it relates to the NJ LEV regulation). The NLEV regulation was designed with the understanding that EPA cannot require NLEV. NLEV must be mutually agreed upon by the participating states and the auto manufacturers because in the Clean Air Act, Congress disallows EPA from changing vehicle emission standards until at least model year 2004 (see CAA § 202). However, during the time following EPA's proposed approval of the NJCF program as an opt-out substitute for the federal CFFP, EPA promulgated a supplemental final rule for NLEV (see 62 FR 925, January 7, 1998). As per provisions of that final rule, with NLEV opt-in commitments from 9 of the 13 Ozone Transport Commission (OTC) States (including New Jersey) and the 23 major domestic and foreign auto manufacturers, on March 2, 1998, EPA officially found NLEV to be in effect.

Therefore, as per its State-specific LEV regulation, and as indicated in a January 28, 1998 letter from New Jersey Governor Christine Todd Whitman to the EPA Administrator, the State will participate in NLEV and receive creditable emission reductions through the proscribed federal enforcement of NLEV. As stated in its regulation, with its decision to participate in NLEV, the State will not operate California LEV in New Jersey, at least until such time that EPA implements more stringent Tier 2 vehicle emission standards, which will not be sooner than model year 2004 (see CAA § 202 and 63 FR 925–987). Therefore NLEV is now the applicable enforceable backstop to the NJCF program.

The NLEV program requires that auto manufacturers must meet an average vehicle emission standard, based on the certified emission standards of all annual vehicle sales. The annual average vehicle emission standard (referred to as the non-methane organic gas (NMOG) average) increases in stringency on an annual basis. Quantitatively, NLEV will achieve long term vehicle emission reductions which are far greater than what the federal CFFP could have achieved.

The Clean Air Act requires states to observe certain procedural requirements in developing implementation plan revisions for submission to EPA. Sections 110(a)(2) and 172(c)(7) of the Act require states to provide reasonable notice and public hearing before adoption by the state and submission to EPA for approval. Section 110(1) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP revisions. EPA must also determine whether a state's submittal is complete before taking further action on the submittal. See section 110(k)(1). EPA's completeness criteria for SIP submittals are set out in 40 CFR Part 51, Appendix V (1993). New Jersey's SIP revision which EPA is approving in this notice has met all of the procedural requirements and completeness criteria.

II. State Submittal

New Jersey submitted SIP revisions on February 15, 1996, March 29, 1996 and March 6, 1997 which substitutes the State's NJCF program, backstopped by the enforceable NJ LEV program, for the federal CFFP.

The NJCF program consists of the following four components: (1) Incentive Development program, (2) the Department of Energy's (DOE's) EPAct fleet requirements, (3) DOE's Clean

Cities program, and (4) the Advanced Technology Vehicle (ATV) agreement associated with the NLEV program. Components (1), (3) and (4) are voluntary in nature, while the second component, the EPAct fleet requirements, is a mandatory DOE program. However although the EPAct mandate requires purchases of alternative fuel vehicles (see Section C. 2. for additional details), it does not require vehicle emissions standards to be met, as the federal CFFP does. New Jersey will track clean alternative fueled EPAct vehicle purchases as well as those from the other NJCF components in determining the degree to which its federal CFFP substitute is achieving equivalent reductions, and subsequently the amount of credit which will be needed from its backstop, the NLEV program.

Because NLEV has been found to be in-effect by EPA, the State's regulation states that New Jersey will participate in the NLEV program (discussed in more detail in section III. C. of this notice). The NLEV program will begin with model year 1999 vehicle sales in the Northeast Trading Region (NTR), which is comprised of NLEV opt-in states Connecticut, Delaware, Maryland, New Jersey, New Hampshire, Pennsylvania, Rhode Island, Virginia and Washington, D.C. The NLEV program requires that those vehicles be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale meet a yearly NMOG fleet average over the entire NTR. The NLEV fleet-average NMOG standard will be 0.148 grams per mile for model year 1999. The NMOG average becomes increasingly stringent annually, and for model year (MY) 2001 and later the standard is 0.075 grams per mile.

III. Analysis of State Submission

A. Opt Out Criteria and Requirements

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a federal CFFP to opt out of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program result in long term emission reductions equal to or greater than the federal CFFP. Also, EPA can only approve such substitute programs that consist exclusively of provisions other than those required under the Clean Air Act for the area. New Jersey's NLEV-backstopped NJCF program satisfies both of these requirements.

B. Equivalency of Substitute

The Clean Air Act requires that any substitute for the federal CFFP must provide equivalent long term emission reductions. In its SIP revision, the State estimated the emission reductions which would be attributable to operation of the federal CFFP in New Jersey. It is this amount of long term reduction, discussed below, which the State's substitute must achieve.

Light Duty Vehicle Analysis

New Jersey first analyzed the potential for emissions reductions to result from long term compliance with the light duty vehicle portion of the federal CFFP in New Jersey. The light duty vehicle purchase requirements of the federal CFFP are intended to ensure a gradual turnover of conventional light duty fleet vehicles to clean light duty vehicles in covered fleets. Under the federal CFFP, in the long term a substantial portion of light duty vehicles in covered fleets would meet at least the LEV standard, where otherwise they would not have met those more stringent standards (i.e., if the State was not also operating a LEV program as described above). In its SIP revision however, New Jersey pointed out that the light duty vehicle portion of the federal CFFP, in the long term, would essentially duplicate the regional and Statewide, more comprehensive NLEV program which has already been adopted as part of the NJ LEV regulation [Adopted on November 22, 1995 at 27 N.J.R. 5016(a)(December 18, 1995), codified at N.J.A.C. 7:27–26]. EPA has determined that, in light of the NLEV program, operation of the light duty federal CFFP in New Jersey would yield essentially no benefit above that from the NLEV. For additional details regarding the light duty vehicle analysis, the reader is referred to EPA's November 20, 1997 proposed approval of NJCF as an opt-out substitute for the federal CFFP at 62 FR 61948 and to the Response to Comments section of this action.

Heavy Duty Vehicle Analysis

The heavy duty vehicle portion of the federal CFFP requires that on an annual basis, 50 percent of heavy duty fleet vehicles purchased each year must meet clean fuel vehicle emission standards. Through appropriate modeling, New Jersey has determined that the estimated emission reduction benefit that would result from applying the federal CFFP's heavy duty vehicle requirements in New Jersey would be approximately 4.5 tons per day (tpd) of volatile organic compounds (VOC) and oxides of nitrogen (NOx) combined in 2010 (for additional details regarding modeling techniques and assumptions used to arrive at this figure, the reader is referred to EPA's November 20, 1997 NJCF proposal at 62 FR 61948). New Jersey's SIP submittal states that modeling emission reductions out to the year 2010 is adequate for the purpose of determining the long term reductions which could be expected of the heavy duty federal CFFP in New Jersey. EPA agrees with this reasoning. The NJCF program must achieve that amount of emission reductions within the same time frame in order to be an acceptable substitute for the federal CFFP. If it does not, as will be verified through the program emission reduction tracking system that the State committed to implement (described below), the State has also committed to use enforceable emission reduction credit generated from the NLEV program to make up any emission reduction shortfall which may result.

C. NJCF Program Details and Goals

NJDEP has estimated that, in order to meet the Clean Air Act requirement of an approvable federal CFFP substitute, the NJCF program must provide emission reductions equivalent to those from approximately 50,750 medium heavy duty certified clean fueled vehicles by 2010. NJDEP has determined that in order to contribute towards the emission reductions needed for a substitute program, a medium or heavy duty vehicle must be certified by CARB to meet LEV (or cleaner) standards.

1. Incentive Development Program

The incentive development program was developed by a public/private workgroup which includes representatives of local and national fleet operators, municipalities, alternative and clean fuel providers, and government officials. The Workgroup's efforts are intended to spur use of clean alternative fuel vehicles. Major areas of focus for the Workgroup, as it implements its Action Plan, include development of a New Jersey alternative fuel mechanic training program and promotion of a State policy with legislative and regulatory support of the use of alternative fuels and AFVs. Examples of such legislation include a bill which would provide sales and use tax exemption for clean alternative fuel vehicle purchases in New Jersey.

2. EPAct Purchase Mandates

The second component of the NJCF program is the alternative fuel vehicle purchase requirements under the federal EPAct, 42 U.S.C. 13201 *et seq.* Under

EPAct, all state, federal, and fuel-provider fleets must ensure that a percentage of their new light duty vehicle purchases operate on alternative fuels. In the long term, 75% of new state and federal purchases and 90% of fuel-provider purchases must be AFVs. In its SIP submittal, New Jersey reported that at least 61 State vehicles run on clean alternative fuels as a result of EPAct compliance, and alternative fuel vehicles are available for purchase by public agencies through the State purchase contract.

3. New Jersey Clean Cities Program

Clean Cities is a voluntary federal program designed to accelerate and expand the use of clean AFVs and related refueling infrastructure in communities throughout the country. In 1995 the State's Division of Energy initiated its North Jersey Clean Cities programs in the metropolitan areas of Elizabeth, Jersey City, Newark and Trenton; in 1997 this program received official Clean Cities designation status from the U.S. Department of Energy (USDOE). New Jersey plans to expand this program in other areas of the State as well, and expects the program to have a significant long term emission reduction benefit.

4. Advanced Technology Vehicle Program

The fourth component of the NJCF program is an Advanced Technology Vehicle (ATV) cooperative agreement between states and auto manufacturers which emerged during their negotiations on the NLEV program. The regulatory portion of the NLEV program does not address an agreement regarding advanced technology vehicles (ATV), and advancing technology is not a legally-required criterion of the NLEV program, however EPA recognizes that a separate agreement between states and auto manufacturers regarding an ATV component could be a useful means of achieving additional environmental benefits beyond the emissions reductions which will be achieved through NLEV. In EPA's June 6, 1997 NLEV rulemaking, an ATV was defined as any vehicle certified by CARB or EPA that is either: (1) A dual-fuel, flexible-fuel, or dedicated alternatively fueled vehicle certified as a transitional low emission vehicle (TLEV), LEV, or ultra low emission vehicle (ULEV) when operated on the alternative fuel; (2) certified as a ULEV or ILEV; or (3) a dedicated or hybrid electric vehicle. As discussed in that rulemaking, EPA acknowledges the suggestion that advancing motor vehicle pollution control technology through a states-manufacturers partnership can be an important result of the basic NLEV agreement. Furthermore, EPA agrees with New Jersey's intention to use an ATV agreement with the auto manufacturers as part of its substitute (backstopped by the enforceable NLEV program) for the federal CFFP. The ATV program, as New Jersey and other states intend, would involve a cooperative effort among the NLEV opt-in states, EPA, DOE, fuel providers, aftermarket converters, fleet operators, and the full range of motor vehicle manufacturers to develop ways to increase use of ATVs. In its SIP submittal, the NJDEP stated it expects to begin implementing this ATV program, in cooperation with other states, the auto manufacturers, and fuel providers, soon after the NLEV program's implementation and agreement on an ATV component is reached.

In order to facilitate implementation of the NJCF program, New Jersey has stated in its latest SIP submittal that it is relying on EPA to support the ATV initiative by approving emission reduction SIP credits, where appropriate, upon the introduction of ATVs into the fleet. EPA is prepared to assist the State in this manner (i.e. by allowing long term emission reductions generated by a cooperative ATV program to be used in part as a substitute SIP measure for the federal CFFP), provided emissions reductions from the ATV provision, along with those generated from the other NJCF program components, can be documented by the State. It is for this purpose that New Jersey has incorporated a planned system to track NJCF program emissions reductions.

This system, described below, will serve to identify the need, if any should exist in the future, to utilize the credit from the backstop should the planned reductions not occur as intended with the voluntary NJCF program.

NJCF Program Backstop

New Jersey, along with the states of Connecticut, Delaware, Rhode Island, Maryland, New Hampshire, Pennsylvania, Virginia, and Washington, D.C. have opted into the NLEV program. Upon its NLEV opt-in, NLEV became the effective backstop to the NJCF, as discussed in section I. of this action.

NLEV is a voluntary nationwide program to make new cars significantly cleaner emitting than today's current cars. NLEV, which began as the ''OTC-LEV'' program before it included provisions for cleaner vehicle sales for the entire nation, has also been referred to in the past as ''49-State LEV'' and ''the 49-State Car program.'' The NLEV program represents an alternative, more effective method of regulatory development through extensive interaction between EPA and stakeholders. NLEV will achieve substantial air pollution reductions nationwide while providing the automotive industry flexibility to meet the new requirements in the most efficient manner. The NLEV program requires that each model year of vehicles produced for sale in the Northeast opt-in states, beginning with model year 1999, be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale, meet a yearly NMOG fleet average which becomes increasingly more stringent annually, and for model year 2001 and later the standard is 0.075 grams per mile. Manufacturers will meet the annual NMOG averages through a sales mix of vehicles certified to meet emission standards of varying stringency. Like CARB certified vehicles and as discussed earlier in section I. of this action, such standards exist for TLEVs, LEVs, ULEVs, ZEVs and the existing Tier I federal standards.

On December 16, 1997 the EPA Administrator signed the final rule for NLEV and began the opt in clocks for the states of the Northeast, the auto manufacturers and EPA. According to the rule, those states had forty-five days to opt in, and the manufacturers had sixty days from the rule signature to make that decision. Nine northeastern states and 23 major auto manufacturers took the opportunity to opt into the National LEV program within the specified time frames. New Jersey did so with a January 28, 1998 letter to the Administrator from Governor Whitman committing to the State to participation in the NLEV. EPA determined that the opt-ins from both sets of parties met the criteria necessary for the NLEV program to be in effect and enforceable, and on March 2, 1998, the EPA Administrator made the official finding that the NLEV program is in effect.

NLEV will result in substantial reductions in NMOG and NO_X, which contribute to ozone nonattainment in many states including New Jersey. Emission reduction estimates are based on a start date of MY 1999 in Northeast and MY 2001 nationwide. EPA estimates that nationally, by 2007, NO_X will be reduced by 496 tons per day and NMOG will be reduced by 311 tons per day as a result of NLEV implementation. NLEV will also result in reductions in toxic air pollutants such as benzene, formaldehyde, acetaldehyde, and 1,3

butadiene. Benzene is classified as a human carcinogen, while the others are considered probable carcinogens.

NLEV in New Jersey will assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized through the light duty portion of a federal CFFP; in the event that the NJCF program fails to reduce long term emissions to the level which would have been achieved by the federal CFFP, NLEV will make up the resultant shortfall.

Vehicle Tracking System

In its most recent NJCF SIP revision submittals, New Jersey has committed to implement an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program (detailed above) throughout the State beginning in 1998. The State will periodically track the variety of clean NJCF vehicles purchased in New Jersey, but most notably CARB and EPA certified LEVs (and vehicles certified to more stringent standards, such as ULEVs). The information gathered from the automated tracking system will provide an accurate indication of the number of vehicles purchased in New Jersey that are certified to meet the applicable LEV, etc. standards. In this manner the State will accumulate a database with which it can calculate emission reduction benefits associated with certified clean vehicle purchases resulting from the NJCF program, and determine if necessary the need to employ the LEV backstop discussed above. New Jersey further clarified the method it will employ to track these vehicle purchases as a means of assessing the NJCF program's long term effectiveness. Specifically, NJDEP will receive reports on at least an annual basis from the New Jersey Division of Motor Vehicles, the New Jersey Department of Treasury and the USDOE which will contain updates of the numbers of certified clean vehicles and AFVs purchased statewide in New Jersey.

IV. Public Comment

EPA proposed to approve the New Jersey federal CFFP opt-out SIP revision on November 20, 1997, 62 FR 61948. Comments were received from one interested party. EPA evaluated the comments, which have been incorporated into the docket for the rulemaking. The comments were evaluated with respect to the proposed approval, and the summary of the comments and EPA's responses follow.

Comment: New Jersey should move to supplement its mobile source reduction strategies as opposed to using reductions in place of the federal CFFP. The federal government conditionally leaves the option available to the State of New Jersey to find a substitute for the Clean Fuel Fleet Programs. New Jersey should use all available mobile source reduction strategies, including a LEV program combined with the NJCF program, in its effort to achieve attainment of the ozone standards.

The commentor also asserts that New Jersey has completely abandoned any clean fuel requirements for heavy duty fleet vehicles. The commentor questions why emission reduction credits generated from the NJCF program or the NLEV program should be used for mobile sources, when New Jersey fails to control emissions from heavy duty trucks, which would be included in the Clean Fuel Fleet Program. If all vehicles and stationary sources are subject to emissions reductions, the commentor states that there seems to be a significant omission of the exercise of regulatory authority in disregarding heavy duty truck emissions.

Response: The Clean Air Act allows states to opt out of the federal CFFP with an equivalent substitute, as the commentor points out. EPA is directed to approve the State's opt out SIP revision provided it meets the statutory requirements of equivalent long term reductions through a provision or provisions not otherwise required by Act, which New Jersey has done. In enforcing the requirements of the Clean Air Act, EPA consistently works to afford as much flexibility to states in meeting those requirements, and does not second-guess state policy choices regarding how to achieve attainment.

Regarding the comment that New Jersey has abandoned clean fuel requirements for heavy duty fleet vehicles, again, EPA abstains as much as possible from dictating states' policy choices regarding which sources to regulate, as long as they meet requirements of Clean Air Act. This applies to the degree to which the substitute NJCF program does or does not target heavy duty fleet vehicles, as long as the program will achieve equivalent reductions, which EPA has determined that it will.

Comment: NJDEP has not satisfied the federal criteria in Section 182(C)(4)(B) of the Clean Air Act, which requires that ''the Administrator may approve of such revisions only if it consists exclusively of provisions other than those required under this Act for the area.'' The commentor asserts that the reason OTC-LEV fails as an adequate substitute is that the adoption of the OTC-LEV program was required throughout the Ozone Transport Region (OTR) in order to bring certain areas of the OTR into ozone attainment pursuant to Section 184(c)(1) of the Clean Air Act. Therefore, the commentor wrote, New Jersey was compelled to adopt this LEV requirement, making such a LEV program a Clean Air Act requirement and unavailable for use as a substitute federal CFFP measure. The commentor further believes that comparison to OTC-LEV in an equivalency demonstration is misplaced because New Jersey anticipated participation in NLEV, employing OTC-LEV only as a fall-back measure if NLEV did not become effective. Lastly the commentor states that New Jersey cannot use OTC-LEV as a backstop because as adopted by the State, OTC-LEV can only become effective in New Jersey if a threshold of other state LEV programs is reached.

Response: The Clean Air Act directs EPA to approve a substitute program if it achieves long-term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the federal CFFP or the portion of the federal CFFP for which the measure is to be substituted, and is not otherwise required by the Clean Air Act. EPA maintains that both the NJCF program, and its backstop, the NLEV program will assure emissions reductions at least equivalent to the federal CFFP and neither program is otherwise required by the Clean Air Act.

New Jersey originally intended to opt out of the federal CFFP with the LEV program in a submittal dated May 15, 1994. Although EPA could not take action to approve that submittal because the LEV regulation was only in the proposal stage at that time, New Jersey intended to adopt a LEV program and to use it as a federal CFFP opt out measure before it was compelled to adopt such a program for any other reason (see 62 FR 61948 under Section I. Background for further detail on the State's earlier submissions).

Subsequent to New Jersey's original intended opt out with LEV, on December 19, 1994 EPA approved a petition by the OTC to require OTC-LEV, or an equivalent substitute, e.g. NLEV, throughout the OTR. However, as stated in the November 20, 1997 **Federal Register** notice, a Federal Circuit Court has since remanded that requirement. [*Virginia* v. *EPA*, No. 95–1163 (D.C. Cir. March 11, 1997)]. The Court's vacatur of OTC-LEV, and the equivalent NLEV, as a SIP requirement of the OTR States effectively made these programs ''not otherwise required by the Act'' and thus eligible for use by the States as a

substitute measure, as permitted under Section 182(c)(4) of the Clean Air Act.

EPA rejects the assertion that the proposed approval's comparison to OTC-LEV in an equivalency demonstration is misplaced. Rather, EPA believes that the equivalency demonstration, and the analysis of the demonstration, was appropriate. The analysis examined the effect of federal CFFP operation concurrent to operation of either OTC-LEV (also referred to as the State LEV and ''California'' LEV program) or NLEV, in recognition that one or the other would be in effect through the long term. Results of the examination yielded the quantity of emissions reductions necessary to be achieved by the substitute (or its backstop) for it to be equivalent to the federal CFFP. The substitute meets the equivalency requirement because New Jersey has committed to bring about the sale of additional clean vehicles which will reduce as much emissions as the federal CFFP would have, to track those reductions on a regular basis and to substitute emission reductions from the backstop NLEV program if necessary.

The commentor's assertion that New Jersey cannot use OTC-LEV as a backstop because its effectiveness is dependant on a certain threshold of other state LEV programs is invalidated because NLEV is the effective backstop (see section I. of this action), and does not rely on such a threshold.

Comment: The commentor asserts that NJDEP's LEV program lacks State enforceability because the NJLEV rule excludes from enforcement action any failure to comply with the fleet average requirement.

Response: New Jersey had indicated that if it had eventually operated the OTC-LEV program, active program enforcement would have been provided if it was determined necessary for compliance subsequent to implementation. However, this issue is now moot since New Jersey has opted into NLEV (see the above response to comment and also section I. of this approval).

Comment: NJDEP has not adequately documented an equivalency demonstration for the long-term emission reductions which would have been associated with a light duty federal CFFP. Although NJDEP stated, and EPA agreed in its proposed approval, that an explicit demonstration was unnecessary because of the duplicative nature LEV program operation, the commentor states that the Clean Air Act does not make this exception to the State's duty to establish the equivalency of any substitute program. New Jersey is ''guesstimating'' that it will achieve the equivalent reductions. There are no quantifiable methods established to demonstrate that there will be ''equivalent'' reductions.

Response: Clean Air Act section 182(c)(4)(B) states that the EPA Administrator shall approve a federal CFFP substitute measure ''that in the Administrator's judgement will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of title II, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute.'' Thus the Clean Air Act does not explicitly require the State to document an equivalency demonstration, as the commentor asserts, but rather defers to EPA's judgement of the long-term equivalency of the substitute measure. In judging the equivalency of the NJCF, for the purpose of comparison, EPA (and the State) set out to determine the long-term emissions reductions which would have been achieved by operation of the light duty federal CFFP in New Jersey. EPA concluded that those reductions would be negligible to zero because light duty federal CFFP purchase requirements would duplicate existing, further reaching NLEV sales requirements in New Jersey (vehicle emission standard requirements of both programs are essentially identical). Therefore, since in EPA's judgement the amount of long-term reductions attributable to the light duty federal CFFP would be zero, a demonstration that the light duty federal CFFP portion of the substitute program will achieve at least zero reductions would be superfluous and is unnecessary.

The commentor asserts that there are no quantifiable methods established to demonstrate that there will be equivalent reductions. However, as detailed in EPA's proposed NJCF Program approval at 62 FR 61961, New Jersey performed a modeling analysis which determined that the federal CFFP substitute must achieve approximately 4.5 tons per day of NOx and VOC combined by 2010 in order to achieve equivalent reductions. The State further determined that the requisite reductions can be achieved through acquisition of 50,750 medium heavy duty clean vehicles by 2010. As detailed above, New Jersey has initiated an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program throughout the State beginning in 1998. The reader is referred to the subsection titled ''Vehicle Tracking System'' under section III. C. of this notice, and to the proposal at 62 FR 61952 for further information on the tracking system. The State has committed in its SIP submittal that it will monitor its progress toward procurement of that number and type of vehicles on a regular basis, and will backstop any shortfall with NLEV emission reductions if that goal is not reached by 2010.

Comment: Regarding claims that the NJCF Program will still create a shortfall as compared to the light duty federal CFFP, New Jersey believes that any loss of emission reduction benefits that would occur from gasoline powered LEVs operated on Federal RFG rather than the fuel that they were certified to operated on (e.g., California RFG) would be relatively small in the long-term. There is no basis other than the anticipation by NJDEP that in the long-term, more vehicles will be operating on alternative fuels and to support that assertion. The commentor requests that this basis for satisfying this shortfall in needed emissions reduction, be further explained.

Response: The commentor is referring to New Jersey's further examination of the relative effects of programs associated with the Light Duty Vehicle Analysis, discussion of which can be found under section III. B. of EPA's February 20, 1997 proposed approval (see 62 FR 61948). As explained above, EPA has judged that light duty federal CFFP emissions reductions would be at most negligible due to concurrent operation of NLEV in New Jersey. However, in its SIP submittal, New Jersey went further to discuss qualitatively the potential effects of operation of LEVs on Federal RFG vs. California RFG. California RFG is the fuel for which gasoline-powered CARB LEVs are certified to operate on. New Jersey stated, and EPA agreed, that in the aggregate, long-term loss of emissions benefit from operating CARB certified LEVs on Federal RFG would likely be small, if any. EPA believes this is especially true when considering that in the long term, Federal RFG phase 2 (effective throughout New Jersey on January 1, 2000) will be in place. Federal RFG phase 2 will be substantially cleaner than both conventional gasoline and Federal RFG phase 1, and closer in composition to California RFG, specifically with respect to sulfur levels. Sulfur in gasoline inhibits the performance of catalytic converters, which are used on all current gasoline-fueled vehicles to reduce VOCs, carbon monoxide and NOx. EPA may soon propose gasoline sulfur standards which would result in sulfur levels lower than Federal RFG phase 2 levels, to be implemented in the long term.

The commentor asserts that the only basis for the assumption that in the long term more vehicles will be operating on alternative fuels (and thus reduce the number of cleaner gasoline-powered vehicles) is New Jersey's anticipation of such. EPA disagrees with this assertion, and further believes that the State has thoroughly established that basis through the provision of the NJCF Program elements. The NJCF Program will both assure and encourage alternative fuel and AFV development and use through elements such as EPAct purchase mandates and the Incentive Development Program. The reader is referred to section III. C. of this notice and the proposed approval at 62 FR 61951 for further detail regarding the NJCF Program elements. Additionally since the publication of the NJCF Program proposed approval, New Jersey supplemented its SIP revision with a March 30, 1998 letter from NJDEP which details further enhancements to the NJCF program. These include: an ATV Incentive Plan which will encourage the purchase of ULEV and cleaner technology vehicles; plans for a Mobile Source Outreach Strategy for the Northeast, which includes a LEV component; and a broadening of State alternative fueling station use to include access by local governments, contingent on NJCF Program approval in the SIP.

Comment: The State did not properly preserve its right to Opt Out of the federal CFFP as it did not indicate any specific substitute measures that would be used to achieve the required reductions. The NRDC Appellate Court Decision does not allow any preservation of this option.

Response: The commentor is asserting that failure to specify an opt out program prior to May 1992 means that the State can no longer opt out of the federal CFFP. EPA has interpreted that states' continued ability to opt out now does not depend on them having submitted such a specification prior to May of 1992. As stated in EPA's proposed approval of the NJCF program published on November 20, 1997 at 62 FR 61948, in its decision that EPA's conditional approval policy was contrary to law [*NRDC* v. *EPA*, 22 F.3d. 1125 (D.C. Cir. 1994)], the court did not want to penalize states for their reliance on EPA's actions. Therefore, EPA is considering all relevant submissions made thus far by the State that are intended to substitute for the federal CFFP. Moreover, EPA has interpreted that the May 1992 deadline is a deadline without a consequence, and therefore there is no time constraint regarding EPA's approval of such an opt out program.

V. Summary of Action

In this final rule, EPA is approving New Jersey's SIP revision submitted to fulfill the federal Clean Fuel Fleet requirements of the Clean Air Act. EPA believes New Jersey's Clean Fleet program, backstopped by the adopted New Jersey LEV program implementing NLEV is an adequate substitute for the federal Clean Fuel Fleet program under section 182(c)(4).

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already

imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. 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 determined that the approval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 30, 1998.

William J. Muszynski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(65) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(65) Revision to the New Jersey State Implementation Plan (SIP) for ozone, submitting a New Jersey Clean Fleets program with Ozone Transport Commission Low Emission Vehicle (OTC–LEV) program as an effective backstop, substituted for the Clean Fuel Fleet program, dated February 15, 1996, March 29, 1996, and March 6, 1997, submitted by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference. Title 7, Chapter 27, Subchapter 26, ''Ozone Transport Commission Low Emission Vehicles Program,'' effective December 18, 1995.

(ii) Additional material.

(A) Letter dated February 15, 1996 from NJDEP Commissioner Shinn to Region 2 Administrator Jeanne M. Fox transmitting first version of NJCF program.

(B) Letter dated March 29, 1996 from NJDEP Commissioner Shinn to Region 2 Administrator Jeanne M. Fox supplementing February 15, 1996 submittal.

(C) ''SIP Revision for the Attainment and Maintenance of the Ozone National Ambient Air Quality Standards, New Jersey Clean Fleets (NJCF) SIP,'' March 6, 1997.

(*1*) NJCF Appendix D: ''New Jersey Clean Fleets (NJCF) Program (1996 Action Plan Recommendations).''

(*2*) NJCF Appendix H: Response to Public Comments, NJCF Program, dated February 14, 1997.

(*3*) February 20, 1998 letter from Sharon Haas, Principal Environmental Specialist, NJDEP, to George Krumenacker, Transportation Services Specialist I, Bureau of Transportation Services, New Jersey Department of Treasury.

(*4*) March 25, 1998 Memo from Colleen Woods, Acting Director, Motor Vehicle Services, to Sharon Haas, Principal Environmental Specialist, NJDEP.

3. In § 52.1605 the table is amended by adding a new entry for Subchapter 26 under the heading ''Title 7, Chapter 27'' to the table in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
*	*	*	* * * *
Title 7, Chapter 27			

State regulation	State effective date	EPA approved date	Comments
* *	*	*	* * *
Subchapter 26, ''Ozone Transport Commission Low Emission Vehicles Program''.	12/18/95	Nov. 10, 1998, 63 FR 62955.	Approves Subchapter 26 ''OTC–LEV program'' which as adopted states that New Jersey will not implement its California LEV program in the event that EPA finds National LEV to be ''in-effect.'' EPA's March 2, 1998 National LEV in-effect finding thus makes National LEV the effective program contained in Subchapter 26. Subchapter 26 is approved here as an effective enforceable backstop to voluntary New Jersey Clean Fleets program.

* * * * *

[FR Doc. 98–29968 Filed 11–9–98; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50632A; FRL–6042–2]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 98–22441) in the **Federal Register** of August 20, 1998 issuing significant new use rules (SNURs) for 73 substances. This document inadvertently did not assign an exemption to notification requirements for a substance subject to one of these SNURs. EPA did not intend to omit this exemption to notification requirements. This action is necessary in order to issue the correct notification requirements.

DATES: This document is effective on November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a document (FR Doc. 98–22441) in the **Federal Register** of August 20, 1998 (63 FR 44562) (FRL–5788–7) which inadvertently did not assign an exemption to notification requirements for a substance for which a SNUR was issued. This correction adds the exemption to notification requirements for § 721.9719.

I. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule does not impose any requirements. It only implements a correction to the Code of Federal Regulations. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.