

**§ 86.1706-99**

stringent as the National LEV standards provided in 40 CFR part 86 subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, STATE [intends to / will] forbear from adopting and implementing a ZEV mandate effective prior to model year 2004.

[62 FR 31242, June 6, 1997. Redesignated and amended at 63 FR 967, Jan. 7, 1998]

**§ 86.1706-99 National LEV program in effect.**

(a) No later than March 2, 1998, 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 January 30, 1998, and on opt-in notifications from manufacturers submitted pursuant to § 86.1705(c) and received by EPA February 17, 1998.

(b) EPA shall find that the National LEV 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) Each OTC State that opts in has lawfully opted in pursuant to § 86.1705(e) and any conditions placed on opt-ins by OTC States that are 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 Honda Motor Company, Inc.  
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.

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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

[63 FR 969, Jan. 7, 1998]

**§ 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 (j) 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 set forth 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. A copy of the notification shall be sent to the Director, Vehicle Programs and Compliance Division; U.S. Environmental Protection Agency; 2565 Plymouth Road; Ann Arbor, Michigan, 48105. 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 set forth 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 takes 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 calendar 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 shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification. 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 paragraph (j) of this section. 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 this paragraph (d).

(ii) [Reserved]

(2) Within sixty days of receipt of an opt-out notification under this paragraph (d), 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 under this paragraph (d) remains a covered manufacturer until the opt-out has come into effect under paragraph (d)(1) of this section and EPA or a reviewing court determines that the opt-out is valid.

(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 starting with the model year for which 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. 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.

(5) Upon the effective date of a manufacturer's opt-out under this paragraph (d), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(6) If a covered manufacturer opts out under this paragraph (d), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt out is not effective for model years (as defined in part 85, subpart X) that commence prior to this effective date.

(7) 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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(8) In a state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(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<sub>x</sub>, 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 §§ 86.1708(e), 86.1709(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, if the relevant California factor is raised to 1.0 or higher, 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); and

(D) 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 by EPA of mandatory tailpipe standards and other related requirements effective model

year 2004 or later 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 or state law a state Section 177 Program and/or a ZEV Mandate (except in a state with an Existing ZEV Mandate), that does not allow National LEV as a compliance alternative for the duration of the state’s commitment to the National LEV program. The state’s commitment to National LEV extends until model year 2006. If, no later than December 15, 2000, EPA has not adopted standards at least as stringent as the National LEV standards provided in 40 CFR part 86, subpart R that apply to new motor vehicles in model year 2004, 2005 or 2006, the state’s commitment to National LEV only extends until model year 2004. A manufacturer could opt out based on this condition even if the state regulations or law 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 prior to EPA’s receipt of the opt-out notification. An opt-out under this paragraph (e) shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer’s opt-out notification.

(2) As of the model year named for the calendar year following the calendar year of 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, and § 86.1711 shall no longer apply to vehicles sold in the violating state. Beginning in that model year and until the violating

state's requirements become effective pursuant to sections 110(l) and 177 of the Clean Air Act or until the date specified in the following sentence, whichever is earlier, 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. If the violating state withdraws or otherwise nullifies the relevant violating final action, vehicles sold in that state shall count towards the covered manufacturers' fleet NMOG standards under § 86.1710 and be subject to § 86.1711 as of the model year named for the second calendar year following the calendar year in which the violating state took the final action nullifying or withdrawing the final violating action, or as of the model year named for the fourth calendar year following the calendar year in which the violating state took the violating final action, whichever is later. 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 violating final action. Notwithstanding an earlier effective date of a manufacturer's opt-out under this paragraph (e), 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 violating final action). For model years for which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emissions reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emission standards of §§ 86.096-8(a)(1)(i), 86.097-9(a)(1)(i) and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that state.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (e) in any covered state that is not a violating state under this paragraph

(e), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (e), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(5) 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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(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 EPA has not received a National LEV SIP revision from the violating state prior to EPA’s receipt of the manufacturer’s opt-out notification. If a manufacturer opts out within 180 calendar 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 calendar 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 under this paragraph (f) would be invalidated and would not come into effect. An opt-out under this paragraph (f) shall be effective no earlier than 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 the calendar year in which EPA receives the opt-out notification, whichever is later.

(2) For a manufacturer that opts out under this paragraph (f), 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 the calendar

year in which EPA receives 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 and the manufacturer does not have to comply with § 86.1711 for vehicles sold in the violating state. 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 under this paragraph (f) 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. For model years in which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emission reductions from new motor vehicles creditable for state implementation plan requirements, the violating state’s emissions reductions shall be based on the emissions standards of §§ 86.096–8(a)(1)(i), 86.097–9(a)(1)(i), and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that 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 under this paragraph (f), in any covered state that is not a violating state under this paragraph (f), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-

violating state at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (f), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(5) 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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(g) *Conditions allowing manufacturer opt-outs—inadequate National LEV SIP submission.* A covered manufacturer may opt out of National LEV if EPA disapproves a covered state's National LEV SIP submission or finds that it fails to meet the requirements for a National LEV SIP revision set forth in § 86.1705(g) or if EPA has not taken final action regarding such a SIP submission and more than one year has passed since such SIP submission was submitted to EPA. 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 submission or found that it does not meet the requirements of § 86.1705(g), provided that EPA has not subsequently approved a revised National LEV SIP revision from that state and found that the SIP revision meets the requirements of § 86.1705(g). A covered manufacturer may also opt out any time after one year EPA's receipt of a state's National LEV SIP submission, provided that EPA has not approved the revision or has not found that the SIP revision meets the requirements of § 86.1705(g). An opt-out under this condition shall 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 under this paragraph (g), as of the model year named for the calendar year following the calendar year in which EPA receives 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 and the manufacturer does not have to comply with § 86.1711 for vehicles sold in the violating state. 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 under this paragraph (g) 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. For model years in which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emission reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emissions standards of §§ 86.096-8(a)(1)(i), 86.097-9(a)(1)(i), and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that 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 under this paragraph (g), in any covered state that is not a violating state under this paragraph (g), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (g), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X) that commence prior to this effective date.

(5) 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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(h) *Conditions allowing manufacturer opt-outs—adoption of a ZEV Mandate.* A covered manufacturer to which a ZEV Mandate might apply may opt out of National LEV if a covered state without an Existing ZEV Mandate takes final action such that it has in its regulations or state law a ZEV Mandate that allows National LEV as a compliance alternative that would be effective during the state's commitment to National LEV. For purposes of this paragraph (h), such a state shall be called the "violating state."

(1) A covered manufacturer may opt out any time after the violating state takes the final action, provided that the violating state has not withdrawn or otherwise nullified the relevant final action prior to EPA's receipt of

the opt-out notification. An opt-out under this opt-out condition shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification.

(2) For a manufacturer that opts out under this paragraph (h), as of the model year named for the calendar year following the calendar year in which EPA receives 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 and the manufacturer does not have to comply with § 86.1711 for vehicles sold in the violating state. 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 under this paragraph (h) 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. For model years in which vehicles sold in the violating state do not count towards the National LEV NMOG average, in calculating emission reductions from new motor vehicles creditable for state implementation plan requirements, the violating state's emissions reductions shall be based on the emissions standards of §§ 86.096-8(a)(1)(i), 86.097-9(a)(1)(i), and subsequent model year provisions, and shall not be based on the National LEV standards, provided that vehicles sold in the violating state are certified to Tier 1 levels when sold in that 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 under this paragraph (h), in any covered state that is not a violating state under this paragraph (h), that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other require-

ments promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted by a non-violating state at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (h), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X) that commence prior to this effective date.

(5) In a non-violating 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 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 and other requirements in effect pursuant to section 177 of the

Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(6) In a non-violating state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(i) *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 (i)(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 (i)(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, ask EPA to consider taking a specific action, and demonstrate the emissions impact of the requested change. Within 60 calendar days of EPA's receipt of the manufacturer's request, EPA must consider the manufacturer's request and respond to it in writing, stating the Agency's decision and explaining the basis for the decision. The date of EPA's response is the date the response is signed.

(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 calendar 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 paragraph (j) of this section.) An opt-out notification under this paragraph (i) is not valid if received by EPA after EPA responds to the request, even if EPA responds after the expiration of the 60-day EPA deadline. An opt-out under this paragraph (i) shall be effective no earlier than the model year named for the calendar year following the calendar year in which EPA receives the manufacturer's opt-out notification.

(3) Upon the effective date of a manufacturer's opt-out under this paragraph (i), the manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any State Section 177 Program that allowed National LEV as a compliance alternative and was adopted at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(4) If a covered manufacturer opts out under this paragraph (i), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(5) In a state that opts out pursuant to paragraph (i)(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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(6) In a state that has not opted out, obligations under National LEV shall be unaffected for covered manufacturers.

(7) Following are the actions that a manufacturer may request EPA to consider under paragraph (i)(1) of this section:

(i) During the certification process and upon a manufacturer's written 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 written request, if vehicles exhibit illuminations of the emission control diagnostic system malfunction indicator light (as defined in § 86.094–17(c)) 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 illumination.

(iii) Upon a manufacturer's written 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.

(j) *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 this paragraph (j) is based on a covered state's or covered manufacturer's opt-out under paragraph (e), (f), (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's or manufacturer's

opt-out notification. If a manufacturer's opt-out under this paragraph (j) is based on a manufacturer's opt-out under paragraph (d) of this section, the manufacturer may only 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. An opt-out under this paragraph (j) shall 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) Upon the effective date of a manufacturer's opt-out under this paragraph (j), in any covered state that manufacturer shall be subject to all requirements (except ZEV Mandates) that would apply to a manufacturer that had not opted into National LEV, including all applicable standards and other requirements promulgated under title II of the Clean Air Act and any state standards and other requirements (except ZEV Mandates) in effect pursuant to section 177 of the Clean Air Act (42 U.S.C. 7507). For any state Section 177 Program that allowed National LEV as a compliance alternative and was adopted at least two years before 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. A manufacturer shall not be subject to any ZEV Mandates (except Existing ZEV Mandates) in OTC States until the model year (as defined in part 85, subpart X) that commences two years after the date of EPA's receipt of the manufacturer's opt-out notice.

(3) If a covered manufacturer opts out under this paragraph (j), any covered state that is not a violating state under paragraph (e), (f), (g) or (h) 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 no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years (as defined in part 85, subpart X), that commence prior to this effective date.

(4) In a state that opts out pursuant to paragraph (j)(3) 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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

(5) In a state that has not opted out, obligations under National LEV remain unaffected for covered manufacturers.

(k) *Conditions allowing OTC State opt-outs—EPA finding of inequivalency.* Any covered state may opt out of National LEV if EPA determines that National LEV would not produce (or is not producing) emissions reductions at least equivalent to the OTC State Section 177 Programs.

(1) At any time during National LEV, a covered state may request in writing that EPA reevaluate its initial equivalency determination (of December 16, 1997) 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 calendar days of receipt of the state's request, EPA must take final agency action to determine whether the determination that National LEV will produce at least equivalent emission reductions to OTC State Section 177 Program is still valid. 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

equivalency determination, EPA shall use the same Mobile emission factor model and the same inputs and assumptions (including vehicle miles traveled, MOBILE5a model inputs, inspection and maintenance programs, reformulated gasoline, and permanent migration effects) as used in the initial determination, with the following exceptions:

(i) In modeling the emission reductions from National LEV, EPA shall use any revised federal new motor vehicle standard or other requirement in place of the standard or other requirement as it existed when EPA made its initial determination; and, to the extent that the modeling reflects EPA's implementation of federal new motor vehicle standards or other requirements, EPA shall take any changes in such implementation into account.

(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 equivalency 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 equivalency 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 calendar days of a final EPA determination pursuant to paragraph (k)(1) of this section that National LEV would not produce (or is not producing) emissions reductions at least equivalent to OTC State Section 177 Programs. The state's opt-out notification shall specify an effective date for the state's opt-out that is no earlier than two calendar years after the date of EPA's receipt of the state's opt-out notification and shall provide that the opt-out is not effective for model years

(as defined in part 85, subpart X), that commence prior to this effective date.

(3) If a covered state opts out based on this condition, a covered manufacturer may opt out of National LEV pursuant to paragraph (j) of this section.

(4) In a state that opts out pursuant to paragraph (k)(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 and other requirements in effect pursuant to section 177 of the Clean Air Act or, if such state standards and other requirements are not in effect, with all requirements that would apply to a manufacturer that had not opted into the National LEV program, including all applicable standards and other requirements promulgated under title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*).

[63 FR 970, Jan. 7, 1998]

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

(a) Light-duty vehicles certified under the provisions of this subpart shall comply with the applicable ex-

haust emission standards in this section. In addition to the exhaust emission standards in this section, light-duty vehicles certified under the provisions of this subpart shall comply with all applicable emission standards and requirements in § 86.096-8 and subsequent model year provisions.

(1) Light-duty vehicles that meet the exhaust emission standards in this section are deemed to be in compliance with all the exhaust emission standards in § 86.096-8(a)(1)(i) and subsequent model year provisions, except for the emission standards and test procedures for total hydrocarbon (THC), particulate matter (PM), and high altitude conditions. Diesel light-duty vehicles that meet the PM standard in this section are deemed to be in compliance with the PM standard in § 86.096-8 and subsequent model year provisions.

(b)(1) *Standards.* (i) Exhaust emissions from 1999 and later model year light-duty vehicles classified as TLEVs, LEVs, and ULEVs shall not exceed the standards in Tables R99-1 and R99-2 in rows designated with the applicable vehicle emission category. These standards shall apply equally to certification and in-use vehicles, except as provided in paragraph (c) of this section. The tables follow:

TABLE R99-1—INTERMEDIATE USEFUL LIFE (50,000 MILE) STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO
TLEV .....	0.125	3.4	0.4	0.015
LEV .....	0.075	3.4	0.2	0.015
ULEV .....	0.040	1.7	0.2	0.008

TABLE R99-2—FULL USEFUL LIFE (100,000 MILE) STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO	PM (diesels only)
TLEV .....	0.156	4.2	0.6	0.018	0.08
LEV .....	0.090	4.2	0.3	0.018	0.08
ULEV .....	0.055	2.1	0.3	0.011	0.04

(ii) *Diesel vehicles.* The particulate matter (PM) standards in paragraph (b)(1)(i) of this section are applicable to diesel light-duty vehicles only. For diesel vehicles certifying to the standards set forth in paragraph (b)(1)(i) of this

section, "NMOG" shall mean non-methane hydrocarbons.