designations of their product line to meet marketing needs and product

changes

EPA's approach allows manufacturers to control the beginning of the model year for each of its engine families, since manufacturers control the date upon which its models begin production. Manufacturers are in the best position to determine the date that any model in an engine family commences production and manufacturers decide production start dates on a model-by-model basis. Therefore, the engine family approach allows manufacturers to avail themselves of the two year lead-time without allowing the state program to lag unnecessarily. By contrast, AAMA's approach (allowing the model year to begin on January 2 of the year previous to the calendar year for all models) would in fact turn the two year leadtime into, in the worst case, a three year lead-time (minus one day).

AAMA also commented that the EPA model year regulations could "obviate" the NMOG fleet average in a situation where manufacturers needed to provide California vehicles to a state for only part of a model year, and thus may have difficulties meeting the fleet average for that model year. EPA recognizes this possibility but notes that one way to solve the problem is to revise production and supply schedules to make sure the state fleet average is met. Given that manufacturers have two years to prepare to meet these requirements, this solution is within the capability of manufacturers. In any event, EPA notes that it is not today ordering that states must include the NMOG fleet average provisions in their state programs in a split model year. Though EPA believes that the NMOG average is important to ensure emission reductions in states with OTC LEV programs, EPA recognizes that states may wish to avoid some of the confusion manufacturers allege is possible in the introductory year of the program. If the application of NMOG fleet average creates a substantial hardship for manufacturers in the first year due to the adoption of OTC LEV by a state late in the year, the state may wish not to require manufacturers to comply with the NMOG fleet average for the first applicable model year.

In addition, AAMA asks for clarification regarding two points. First, AAMA asks EPA to declare whether the model year rules apply on a model-by-model basis or an engine family-by-engine family basis. Second, AAMA seeks clarification on how to determine the point of first production of a particular model. The model year rules are applied on an engine family basis.

Where an engine family contains more than one model, the model year for that engine family begins upon the first production of any model in that engine family. The date of first production of any model is the "Job 1 date," which is the date on which a manufacturer produces the first saleable unit of a specific model.

EPA received a request from AAMA to extend the comment period for the proposed model year regulations to allow more time to consider the issues. EPA rejects this request for the following reasons. EPA recognizes that because of its approval of the OTC recommendation, the OTC member states must now proceed to adopt the OTC LEV program one year from the effective date of the SIP call to ensure the minimum adequate lead-time for the standards to be effective in model year 1999. EPA believes that it is important to promulgate these final regulations now to eliminate any confusion regarding when a model year commences before these states begin the adoption process. EPA has provided the public with a full thirty-day comment period with an opportunity for hearing. In addition, as the model year issue has been the subject of litigation for the last two years, manufacturers have been aware of the central questions surrounding this issue.

For a more detailed discussion of the issues raised by EPA's model year regulations, including AAMA's comments and EPA's responses, please review the SNPRM, 59 FR 48697–48698, and the response-to-comments documents. The text of the final regulations, with minor changes from the proposal, appears below.

## VII. Effective Date

The regulations to be codified in 40 CFR parts 51 and 52 (the "SIP call" regulations) are effective February 15, 1995. This is consistent with the requirement of the Administrative Procedure Act, codified at 5 U.S.C. 553(d), that publication or service of a substantive rule be made not less than 30 days before it becomes effective.<sup>31</sup> EPA will assure that, by January 16,

1995, either notice of today's action will be published in the **Federal Register** or EPA will have provided actual notice of this action to the states that have regulatory obligations as a result of this action. EPA will also make this notice available to other interested persons upon request prior to publication.

As EPA explained in its proposal, it is very important that states begin implementation of the OTC LEV program in model year 1999 to achieve the necessary emissions reductions. EPA had expressed concern in the SNPRM that, to ensure implementation for all models in model year 1999, states must adopt the program before January 2, 1996. See 59 FR at 48669-48670. Based on information in the docket on the production schedules for new models, EPA now believes that adoption of the OTC LEV program by mid-February, 1995, will not significantly reduce the emission benefits of the program for model year 1999.

The regulations to be codified in 40 CFR part 85 are effective February 23, 1995

EPA believes that today's actions, including the finding of inadequacy, the SIP call and the promulgation of the model year regulations, are nationally applicable regulations under section 307(b)(1) of the Act. Alternatively, the Administrator determines that today's actions are nationwide in scope and effect and bases today's action on that determination. Today's action interprets sections 110, 184 and 177 in ways that are applicable nationwide. In addition, the SIP call affects 13 different jurisdictions in five different federal appellate circuits. Thus, under section 307(b), any petitions for review must be filed in the Court of Appeals for the D.C. Circuit within 60 days from the date that notice of this action appears in the Federal Register.

## **VIII. Statutory Authority**

The statutory authority for this final rule may be found at sections 110, 176A, 177, 184, 202, 206, 209, 301 and 307 of the Clean Air Act, 42 U.S.C. 7410, 7506a, 7507, 7511c, 7521, 7525, 7543, 7601, and 7607.

## IX. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

<sup>&</sup>lt;sup>31</sup>EPA generally acts consistently with this provision and provides that a rule does not become effective until 30 days after the date of publication, but technically today's action is not subject to this provision. The EPA Administrator has determined that, pursuant to section 307(d)(1)(V) of the Act, the rulemaking procedures of section 307(d) apply. See 59 FR at 21724. Section 307(d)(1) specifically provides that "[t]he provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." Nowhere does subsection 307(d) expressly provide that section 553(d) of title 5 applies.