

reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving twenty VOC RACT regulations for West Virginia must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1995. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 10, 1994.
Stanley L. Laskowski,
Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding a sentence to the beginning of paragraph (c)(25) introductory text, and by adding paragraph (c)(33) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(25) As of July 7, 1993 the rules in this paragraph (c)(25) are superseded by the

rules contained in paragraph (c)(33) of this section. * * *

* * * * *

(33) Revisions to the West Virginia State Implementation Plan submitted on August 12, 1993 by the West Virginia Department of Commerce, Labor & Environmental Resources.

(i) Incorporation by reference.

(A) Letter of August 10, 1993 from the West Virginia Department of Commerce, Labor & Environmental Resources transmitting Title 45 Legislative Rules, Series 21, Regulation to Prevent and Control Air Pollution from Emission of Volatile Organic Compounds.

(B) Title 45 Legislative Rules, Series 21, Regulation to Prevent and Control Air Pollution from Emission of Volatile Organic Compounds, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 36, 39, 41, 42, 43, 44, 45, 46, 47, and 48, and Appendix A, which were adopted May 26, 1993 and effective July 7, 1993.

(ii) Additional material.

(A) Remainder of August 10, 1993 State submittal pertaining to the rules referenced in paragraph (c)(33)(i) of this section.

(iii) Additional information.

(A) The rules in this paragraph (c)(33) supersede the rules contained in paragraph (c)(25) of this section.

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40 CFR Part 52

[MA39-1-6772a; A-1-FRL-5136-7]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Massachusetts; Substitution of the California Low Emission Vehicle Program for the Clean Fuel Fleet Program (Opt Out)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the Environmental Protection Agency is announcing approval of the State Implementation Plan submitted by the Commonwealth of Massachusetts for the purpose of meeting the requirement to submit the Clean Fuel Fleet Program or a substitute program that meets the requirements of the Clean Air Act. EPA is approving the State's plans for implementing a substitute program to opt out of the Clean Fuel Fleet program. On November 15, 1993, the Commonwealth of Massachusetts formally submitted a revision to their SIP to require the sale of California

certified low emitting vehicles in Massachusetts beginning with model year 1995. Further, on May 11, 1994, the Commonwealth formally notified EPA of its decision to substitute Massachusetts' version of the California Low Emission Vehicle (MA LEV) Program for the Clean Fuel Fleet (CFF) Program as provided for in section 182(c)(4)(B) of the Clean Air Act (CAA).

DATES: This final rule is effective on April 3, 1995 unless adverse or critical comments are received by March 3, 1995, in which case the rule will be withdrawn. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW, (LE-131), Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Damien Houlihan, (617) 565-3266.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires certain States, including Massachusetts, to submit a State Implementation Plan (SIP) revision that includes measures to implement the Clean Fuel Fleet Program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. The program applies to 1998 and later model year vehicles in the entire Commonwealth of Massachusetts which is comprised of two separate nonattainment areas. Section 182(c)(4)(B) of the Act allows states to "opt out" of the Clean Fuel Fleet Program 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 a CFFP would.

In accordance with section 182(c)(4), the Commonwealth of Massachusetts submitted a commitment to either adopt and submit a Clean Fuel Fleet Program or an equivalent substitute program. This was submitted for parallel processing on November 13, 1992, and a formal request was submitted on May 7, 1993. EPA proposed conditional approval of Massachusetts' action on June 7, 1993 (58 FR 31928). However, prior to final EPA action on Massachusetts' commitment, the Court of Appeals for the District of Columbia held that EPA's conditional approval policy was contrary to law. The court held that a base commitment from a state was not sufficient to warrant conditional approval from EPA under section 110(k)(4) of the Act. *NRDC v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994). Therefore, EPA could not take final action on Massachusetts' commitment.

In fashioning a remedy for EPA's improper use of its conditional approval authority, the court did not want states to be penalized for their reasonable reliance on EPA's actions. Massachusetts submitted a commitment to adopt a substitute for the CFFP by May 15, 1994, in reliance on EPA guidance, and the Commonwealth fulfilled that commitment by adopting and submitting the Low Emission Vehicle (LEV) program regulations on May 11, 1994. Therefore, EPA does not believe that Massachusetts should lose its ability to opt-out of the CFFP because of EPA's improper use of its conditional approval authority. EPA is today taking action on Massachusetts' submissions of November 15, 1993 and May 11, 1994, which are intended to substitute MA LEV for the CFF program.

The 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 opportunity for public comment before accepting the submitted measures. Section 110(I) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP provisions.

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).

II. State Submittal

Massachusetts submitted a SIP revision on November 15, 1993, and supplemented it on May 11, 1994, which substituted a low emission vehicle (LEV) program for the Clean Fuel Fleet program. Massachusetts held public hearings on October 30 and 31, 1991; November 1, 1991; February 8, 9, 10 and 12, 1993; and October 1, 5-9, 1993 to entertain public comment on its SIP revisions; these hearings included the Commonwealth's proposal to opt out of the Clean Fuel Fleet Program with LEV. Massachusetts' regulation 310 CMR 7.40, "California Low Emission Vehicle Program" (the LEV program), was adopted by the Commonwealth on January 31, 1992. EPA reviewed the Commonwealth's submission for completeness, in accordance with the completeness criteria, and found the submittals to be complete on October 25, 1994.

Massachusetts has limited its proposed LEV Program to passenger vehicles and light-duty trucks at the present time. When California Air Resource Board finalizes its standards for the remainder of the vehicle classes, Massachusetts will examine the potential air quality benefits of adopting the emission standards for medium duty vehicles, heavy-duty trucks, motorcycles, and off-highway equipment. By adopting the program for passenger vehicles and light-duty trucks, Massachusetts expects to decrease VOC and NO_x emissions far in excess of what would be achieved from a CFF program (namely, 42 tons per summer day of VOC and 35 tons per summer day of NO_x as compared to 1.95 VOC and 0.99 NO_x from a CFF program, long term). The Commonwealth exercised its choice to substitute enough equivalent emission reductions credit from its LEV program for the CFF program so that, of the total reductions obtained from the LEV program, only 1.95 tons per summer day VOC and 0.99 tons per summer day NO_x will apply as a substitute for the CFF program.

III. Analysis of State Submission

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a Clean Fuel Fleet program to "opt out" of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program results in equal or greater emission reductions than does the Clean Fuel Fleet program. Also, EPA can only approve substitute programs that consist exclusively of provisions other than those required by the Clean Air Act for the area. Massachusetts' LEV

program satisfies both of these requirements.

Section 182(c)(4)(B) states that a measure can be substituted for all or a portion of the CFF program, and that such a substitute program will be approvable if it achieves long-term emission reductions equivalent to those that would have been achieved by the portion of the CFF program for which the measure is to be substituted.

Massachusetts, in exercising its option under section 177 of the Clean Air Act, has adopted a LEV program which affects all new light duty vehicles, specifically passenger cars and light duty trucks under 5750 pounds Gross Vehicle Weight Rating (GVWR) for vehicle model years 1995 and later. The MA LEV program is a far reaching program designed to improve the emissions performance of vehicles over a long period of time. The program sets forth five different sets of emission standards, and vehicle manufacturers may market any combination of vehicles provided that the annual average emissions of each manufacturer's fleet complies with a fleet average limit that becomes more stringent each year. In addition, Massachusetts' LEV program requires manufacturers to begin to market a fixed percentage of zero emission vehicles (ZEVs) in model year 1998. The ZEV requirement will help ensure that the LEV program will result in reductions of ozone forming emissions to a degree that is at least equivalent to the Clean Fuel Fleet program.

Massachusetts' LEV program will assure reductions of ozone-forming and air toxic emissions that are at least equivalent to those that would have been realized through implementation of a Clean Fuel Fleet program. The LEV program is a statewide program affecting the sale of all light duty vehicles. A Clean Fuel Fleet program affects a much smaller subset of vehicles, i.e. new covered fleet vehicles, that are already included in the LEV program. The LEV program has fleet average emission standards that are comparable to the Clean Fuel Vehicle (CFV) emission standards that apply to clean fuel fleet vehicles. With respect to long term emission standards for non-methane organic gases (NMOG), the Clean Fuel Fleet program requires that 70% of new covered light duty vehicle and light duty truck purchases in the affected fleets in model year 2000 and later meet the CFV emission standard of 0.075 grams/mile, while the California LEV program requires that the long term NMOG standard for 100% of all light duty vehicles be no more than 0.062 grams per mile (model year 2003 and

later).¹ Based on the above considerations, Massachusetts' LEV program has the potential to achieve emission reductions far in excess of those expected by the Clean Fuel Fleet program. The LEV program also has an earlier implementation date, beginning with model year 1995, than the fleet program.

EPA, auto manufacturers, and states are currently considering the possibility of developing a voluntary national LEV-equivalent motor vehicle emission control program. See 59 FR 48664 (Sept. 22, 1994) and 59 FR 53396 (Oct. 24, 1994). EPA does not expect that today's approval will impede the development or implementation of such a program. If Massachusetts were to participate in a LEV-equivalent program, it would have the opportunity to revise its clean fuel fleet program substitution.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective April 3, 1995 unless, by March 3, 1995, adverse or critical comments are received.

If such comments are received, this rule will be withdrawn before the effective date by publishing a subsequent document. In the Proposed Rules Section of this **Federal Register**, EPA has proposed the same approvals on which it is taking final action in this rulemaking. If adverse comments are received in response to this action, EPA will address them as part of a final rulemaking associated with that proposed action. EPA will not institute a second comment period on this action. If no adverse comments are received, the public is advised that this rule will be effective April 3, 1995.

¹ Massachusetts does not currently have an enforceable NMOG standard as part of its program, but it is in the process of adopting one. Given the lack of an enforceable NMOG standard, there is no assurance that Massachusetts' LEV program will achieve the same emission benefits as if it had adopted California's NMOG average. Nonetheless, several factors support EPA's belief that the reductions of the LEV program will be equal to or greater than the reductions from a CFFP. First, Massachusetts does have a ZEV sales mandate, which might by itself provide reductions equal to or greater than the CFFP. Even if Massachusetts did not have a ZEV mandate, its LEV program still provides sufficient reductions to qualify as a substitute. Massachusetts' LEV program prohibits auto manufacturers from selling in Massachusetts any vehicle in the regulated class that is not certified in California. Manufacturers generally do not "double-certify" vehicles in California (i.e., manufacture both a LEV and a ULEV version of the same model). Auto manufacturer have said that the mix of vehicles sold in California does not differ significantly from the mix sold in Massachusetts. Given all these factors, it is unlikely that the NMOG average of vehicles sold in compliance with Massachusetts' LEV program would be so low that the LEV program would not reduce emissions at least as much as would a CFFP.

Final Action

EPA is approving Massachusetts LEV program as a substitute for a Clean Fuel Fleet program, as submitted by the state on November 15, 1993 and May 11, 1994, pursuant to sections 177 and 182(c)(4)(B) of the Clean Air Act.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The US EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 April 3, 1995. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 19, 1994.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(103) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(103) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 15, 1993 and May 11, 1994, substituting the California Low Emission Vehicle program for the Clean Fuel Fleet program.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection

dated November 15, 1993 and May 11, 1994, submitting a revision to the Massachusetts State Implementation Plan which substitutes the California Low Emission Vehicle program for the Clean Fuel Fleet program.

(B) A regulation dated and effective January 31, 1992, entitled "U Low

Emission Vehicle Program", 310 CMR 7.40.

(C) Additional definitions to 310 CMR 7.00 "Definitions" (dated and effective 1/31/92) to carry out the requirements set forth in 310 CMR 7.40.

(ii) Additional materials.

(A) Additional nonregulatory portions of the submittal.

3. Table 52.1167 of § 52.1167 is amended by adding new entries to existing state citation for 310 CMR 7.00, "Definitions"; and by adding new state citation for 310 CMR 7.40, "U Low Emission Vehicles", to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

| State citation | Title/subject | Date submitted by State | Date approved by EPA | Federal Register citation | 52.1120 (c) | Comments/unapproved sections |
|------------------------|----------------------------|---------------------------|-----------------------|--|-------------|--|
| * 310 CMR 7.00 | * Definitions | * 11/15/93 05/11/94 | * February 1, 1995 | * [Insert FR citation from published date]. | * 103 | * Approving additional definitions for. |
| * 310 CMR 7.40 | * Low emission vehicle. | * 11/15/93 05/11/94 | * February 1, 1995 | * [Insert FR citation from published date]. | * 103 | * Substitute for CFFP. |
| * | * | * | * | * | * | * |

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40 CFR Part 80

[AMS-FRL-5148-4]

Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Partial withdrawal of final rule.

SUMMARY: On July 20, 1994, EPA published a direct final rule (DFRM) which made minor corrections, clarifications, and revisions to various provisions in the final reformulated gasoline rule which was published on February 16, 1994. EPA is withdrawing certain portions of the DFRM, because adverse or critical comments were received by the Agency, or an opportunity to submit such comments at a public hearing was requested for those specific portions. EPA is only withdrawing from the DFRM those items which have been specifically addressed in those adverse comments. The portions of the DFRM withdrawn by EPA concern individual baseline adjustments based on production of JP-4 jet fuel and changes to the valid range limits for RVP under the Simple Model. All other changes noted in the July 20, 1994 DFRM will go into effect on September 19, 1994.

EFFECTIVE DATE: This action is effective January 26, 1995.

ADDRESSES: Materials directly relevant to the direct final rule are contained in Public Docket A-94-30, located at Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Other materials relevant to the reformulated gasoline final rule are contained in Public Dockets A-91-02 and A-92-12. The docket may be inspected from 8:00 a.m. until 4:00 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joann Jackson Stephens, USEPA (RDSD-12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4276. To request copies of this document contact: Delores Frank, U.S. EPA (RDSD-12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4295.

SUPPLEMENTARY INFORMATION: The DFRM published by EPA on July 20, 1994 made a number of changes to EPA's regulations for reformulated and conventional gasoline. EPA issued a direct final rule because the changes it contained were generally minor in nature and were expected to be non-controversial. The DFRM allowed the Agency to finalize such changes in an expeditious and timely manner. For instance, many of the changes clarified issues relevant to the development and auditing of individual baselines which were to be submitted no later September

1, 1994. Likewise, since the reformulated gasoline program will commence on December 1, 1994, the clarifications and changes contained in the direct final rule promote successful implementation of the reformulated gasoline and anti-dumping programs.

Since a number of the changes to the final rule were not insubstantial, EPA provided a 30-day comment period in which comments on specific items could be submitted or a public hearing requested. EPA also announced that it would withdraw from the direct final rule those items that were adversely commented on. This would have the effect of re-activating the regulatory provisions for those items in the final rule for reformulated gasoline promulgated on December 15, 1993 and published in the **Federal Register** on February 16, 1994 (59 FR 7715).

The Agency has received adverse comments on just a few of the changes in the direct final rule. The comments themselves can be found in Public Docket A-94-30. Each of the specific items addressed in the comments is being withdrawn from the DFRM by today's action, which is effective immediately. All items that were not adversely commented on will go into effect on September 19, 1994.

A copy of this action is available on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call. The TTNBBS can be accessed with a dial-in