

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(1) 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