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

EPA, auto manufactures, and states are currently considering the possibility of developing a voluntary national LEVequivalent 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If such comments are received, this rule will be withdrawn before the effective date by publishing a subsequent document.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.

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 SIPapproval 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

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

§ 52.1120 Identification of plan.

(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

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.