

Percent Rate of Progress Plan. Therefore, at New Jersey's request, EPA is withdrawing the direct final approval of New Jersey's TCMs and demonstration that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions. EPA will publish a new proposal when New Jersey resubmits the list and calculations.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 5, 1996.

William J. Muszynski,  
*Deputy Regional Administrator.*

For the reasons set out in the preamble, 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 FF—New Jersey

##### § 52.1582 [Amended]

2. Section 52.1582 is amended by removing paragraphs (e) and (f).

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BILLING CODE 6560–50–P

#### 40 CFR Part 52

[MI48–02–7254; FRL–5662–5]

#### Approval and Promulgation of Implementation Plan; Michigan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This final rule approves a revision to the Michigan State Implementation Plan (SIP) to meet the requirements of the Environmental Protection Agency (EPA) general conformity rule set forth at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. This general conformity SIP revision will enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State and local level.

This approval is limited only to the general conformity SIP revision submitted pursuant to 40 CFR part 51, subpart W. SIP revisions submitted

under 40 CFR part 51, subpart T, relating to conformity of Federal transportation actions funded or approved under Title 23 U.S.C. or the Federal Transit Act, will be addressed in a separate document.

**EFFECTIVE DATE:** This rule will be effective February 18, 1997.

**ADDRESSES:** Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

#### FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Regulation Development Section 2 (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 176(c) of the Clean Air Act (Act), 42 USC 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP which has been approved or promulgated pursuant to the Act. Pursuant to section 176(c)(1) of the Act, conformity means conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity

of all Federal actions to applicable SIPs. Criteria and procedures for determining conformity of Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Act are set forth at 40 CFR part 51, subpart T. The criteria and procedures for determining conformity of other Federal actions, the "general conformity" rules, were published in the November 30, 1993, Federal Register and codified at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

##### II. Evaluation of the State's Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the Act, the Michigan Department of Environmental Quality (MDEQ) submitted a SIP revision to EPA on November 29, 1994. The EPA found the submittal to be complete on April 13, 1995. In its submittal, the State adopted the EPA general conformity rule (40 CFR part 93 subpart B) verbatim. On February 2, 1996, EPA simultaneously published a direct final rule and a proposed rule in which EPA published its decision to approve the Michigan SIP revision. These rules were subject to a 30 day public comment period during which the EPA received one adverse comment. For this reason, the EPA withdrew the direct final rule on March 25, 1996.

General conformity is required for all areas which are designated nonattainment or maintenance for any NAAQS criteria pollutant. The State of Michigan currently has four areas designated ozone nonattainment; Allegan County, Flint Metropolitan Statistical Area (MSA) (Genesee County), Muskegon MSA (Muskegon County), Saginaw-Bay City-Midland (Bay, Midland, and Saginaw Counties), and two ozone maintenance areas; Detroit-Ann Arbor Consolidated MSA area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties which are ozone maintenance), Grand Rapids MSA (Kent and Ottawa Counties). Portions of three counties (Wayne, Oakland, and Macomb) are designated carbon monoxide nonattainment. A portion of Wayne County is maintenance for Particulate Matter-10. The State of Michigan is currently attaining the NAAQS for Nitrogen Dioxide and Sulfur Dioxide, and has not been designated nonattainment for lead.

### III. Public Comments

*Comment:* The commentor contends that Michigan's submission fails to permit meaningful public scrutiny of general conformity determinations in that the Michigan Environmental Protection Act (MEPA), one of the mechanisms upon which the state will rely to enforce the conformity regulations, does not allow the public to compel compliance with general conformity procedures. Specifically, the commentor complains that under MEPA citizen review of inadequate or nonexistent general conformity determinations is limited to actions for declaratory and equitable relief before a circuit court and that such actions will involve protracted delays and expense thus discouraging public participation.

*Response:* Section 110(a)(2) of the Act requires that all SIP measures be enforceable and that the States have adequate authority under local law to implement them. The MDEQ, in consultation with the Michigan Attorney General, determined that MEPA, in conjunction with certain provisions of the Michigan State Air Pollution Act, provides ample authority to enforce these SIP provisions. "Additional" authority is provided by MEPA which authorizes a citizen or entity to bring a civil action for declaratory and equitable relief with respect to general conformity compliance violations.

Provisions requiring the opportunity for public participation are found in the general conformity rule itself (see 40 CFR 93.156). Any citizen may request information regarding a specific Federal action. The Federal agency must make available for review the conformity determination and the supporting documentation used to make the determination, must afford the public opportunity to comment upon such conformity determination, must respond to such comments, must make such responses available upon request, and must make public its final conformity determination.

### IV. EPA Action

The EPA is approving the general transportation conformity SIP revision for the State of Michigan. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules set forth at 40 CFR part 93, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision.

### V. Administrative Requirements

#### A. Executive Order 12866

This action has been classified as a Table 3 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 a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

#### B. Regulatory Flexibility 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

#### E. Petitions for Judicial Review

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 February 18, 1997. 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, General conformity, Hydrocarbons, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: November 21, 1996.

Valdas V. Adamkus,

Regional Administrator.

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 X—Michigan

2. Section 52.1173 is amended by adding paragraph (g) to read as follows:

### § 52.1173 Control strategy: Particulates.

\* \* \* \* \*

(g) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the particulate State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

3. Section 52.1174 is amended by adding paragraph (n) to read as follows:

### § 52.1174 Control strategy: Ozone.

\* \* \* \* \*

(n) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

\* \* \* \* \*

4. Section 52.1185 is amended by adding paragraph (b) to read as follows:

### § 52.1185 Control strategy: Carbon Monoxide.

\* \* \* \* \*

(b) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the carbon monoxide State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

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## 40 CFR Part 52

[MI40-02-7255; FRL-5662-8]

### Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** This final rule approves a revision to the Michigan State Implementation Plan (SIP) to meet the requirements of the Environmental Protection Agency (EPA) transportation conformity rule set forth at 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The transportation conformity SIP revision will enable the State of Michigan to implement and enforce the Federal transportation conformity requirements at the State or local level. This approval is limited only to 40 CFR part 51, subpart T (transportation conformity). SIP revisions submitted under 40 CFR part 51, subpart W, relating to conformity of general Federal actions, will be addressed in a separate EPA document.

**EFFECTIVE DATE:** This rule will be effective February 18, 1997.

**ADDRESSES:** Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Leslie, Regulation Development Section 2 (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

## SUPPLEMENTARY INFORMATION:

### I. Background

Section 176(c) of the Clean Air Act (Act), 42 U.S.C. 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP which has been approved or promulgated pursuant to the Act. Pursuant to section 176(c)(1) of the Act Conformity means conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to applicable SIPs. The EPA published the final transportation conformity rules in the November 24, 1993, Federal Register and codified them at 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The conformity rules require States and local agencies to adopt and submit to the EPA a transportation conformity SIP revision not later than November 24, 1994. This notice does not address the conformity requirements applicable to general Federal actions which are set forth at 40 CFR part 51, subpart W. The EPA will take action on SIP revisions relating to those requirements in a separate notice.

### II. Evaluation of the State's Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the Act, the Michigan Department of Environmental Quality (MDEQ) submitted a SIP revision to the EPA on November 24, 1994. The EPA found this submittal to be complete on April 13, 1995. In its submittal, the State adopted verbatim the EPA transportation conformity rule (40 CFR Part 93, Subpart A), Memorandum of Agreements (MOA) between the affected agencies, and Metropolitan Planning Organization (MPO) resolutions. On February 14,