

**40 CFR Part 52**

[M129-01-6416; FRL-5013-3]

**Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rulemaking.

**SUMMARY:** In this action, the EPA is proposing to approve portions and to conditionally approve other portions of a revision to the Michigan State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 12, 1993, Michigan submitted a SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended in 1990 (CAA or Act), and the Federal motor vehicle inspection and maintenance (I/M) rule at 40 CFR part 51, subpart S. This revision establishes and requires the implementation of an I/M program in the Grand Rapids and Muskegon ozone nonattainment areas. The EPA's final action to approve or conditionally approve portions of the State's SIP revision is dependent upon the materials submitted to EPA 2 weeks prior to the close of the public comment period. Alternatively, should the State fail to timely submit the items described below, EPA is proposing to disapprove the SIP submission.

**DATES:** Comments must be received on or before August 15, 1994.

**ADDRESSES:** Comments may be mailed to: Carlton Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Brad J. Beeson, (312) 353-4779.

**SUPPLEMENTARY INFORMATION:****1. Introduction**

The CAA requires States to make changes to improve existing I/M programs or implement new ones. Section 182 requires any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse with an existing I/M program that was

part of a SIP, or any area that was required by the 1977 Amendments to the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a "basic" or an "enhanced" I/M program depending upon its classification, regardless of previous requirements.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the CAA to have an I/M program.

**II. Background**

The State of Michigan currently contains 3 ozone nonattainment areas which are required to implement I/M programs in accordance with the Act. The Detroit-Ann Arbor ozone nonattainment area is classified as moderate and contains the following 7 counties: Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe. The Grand Rapids ozone nonattainment area is classified as moderate and contains 2 counties: Kent and Ottawa. The Muskegon ozone nonattainment area is classified as moderate and is comprised of Muskegon county. These designations for ozone were published in the **Federal Register** (FR) on November 6, 1991 and November 30, 1992 and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300-81.437.

**III. I/M Regulation General SIP Submittal Requirements**

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the CAA. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51 by November 15, 1993.

Pursuant to these requirements, the State of Michigan was required to

submit a SIP revision that requires the establishment and implementation of a "basic" I/M program in the Detroit-Ann Arbor, Grand Rapids, and Muskegon nonattainment areas by November 15, 1993.<sup>1</sup>

**IV. State Submittal**

On November 12, 1993, the Michigan Department of Natural Resources (MDNR) submitted to the EPA a revision that provided for an I/M program in Western Michigan (i.e., the Grand Rapids and Muskegon nonattainment areas). Under the requirements of the EPA completeness review procedures (40 CFR 51 Appendix V) and the requirements of section 110(k) of the CAA, the submittal was deemed complete by EPA on April 18, 1994.

In Western Michigan, the State will be implementing a biennial, "test-only" I/M program which meets the requirements of the EPA's "enhanced" performance standard and other requirements contained in the Federal I/M rule in the applicable nonattainment counties. The Michigan Department of Transportation (MDOT) has sole responsibility for implementing the program, while the MDNR is responsible for enforcement of the program. In addition, the State will enter into a contractual agreement with a centralized contractor to provide the network of services required to operate a program. Other aspects of the Western Michigan I/M program include: testing of 1975 and later light duty vehicles and trucks and heavy duty trucks, evaporative emission testing for 1975 and later model year vehicles, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration denial, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, minimum expenditure waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, and inspector training and certification, and contractual requirements for a Total Quality Management Plan between the State and the centralized contractor.

**V. The EPA's Analysis of the Western Michigan I/M Program**

The EPA has reviewed the State's submittal for consistency with the statutory requirements of EPA regulations. A summary of the EPA's analysis is provided below. More detailed support for approval of the

<sup>1</sup> This rulemaking is limited to the Grand Rapids and Muskegon nonattainment areas. The I/M program in the Detroit-Ann Arbor nonattainment will be addressed in a separate rulemaking.

State's submittal is contained in a Technical Support Document (TSD), dated May 31, 1994, which is available from the Region 5 Office, listed above.

#### A. Applicability

The SIP needs to describe the applicable areas in detail and, consistent with 57 FR 51.350, needs to include the legal authority or rules necessary to establish program boundaries.

The Western Michigan I/M legislation specifies that an I/M program be implemented in Kent, Ottawa, and Muskegon counties, as required.

#### B. I/M Performance Standard

The SIP revision provides for an I/M program in Western Michigan that meets the "enhanced" I/M performance standard. The State elected to design a program meeting the "enhanced" performance standard as a means of meeting other requirements associated with the CAA (e.g., section 182(b)(1), Reasonable Further Progress). The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the "enhanced" performance standard is met.

#### C. Network Type and Program Evaluation

The SIP needs to include a description of the network to be employed, the required legal authority, and in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for areas implementing "enhanced" I/M programs, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The State has chosen to implement a "centralized" I/M network program design which will utilize a centralized contractor to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design.

The MDNR describes and commits, in its SIP narrative, to institute a continuous ongoing evaluation program consistent with the Federal I/M rule. The results of the evaluation program will be reported to the EPA on a biennial basis. Legal authority, which is contained in the H.B. 4165, authorizes the MDNR to implement this contractor operated centralized program and conduct the program evaluation.

#### D. Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation, and discuss how the performance standard will be met, which includes: (1) a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The adopted legislation for the Western Michigan program, H.B. 4165, provides for a \$24 per vehicle inspection fee which is adjusted annually for inflation. Of this \$24 fee, no less than \$3 will be devoted to oversight and management of the program. The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The State expects to dedicate a staffing level of 12 full-time equivalent employees to support the program.

#### E. Test Frequency and Convenience

The SIP needs to include the test schedule in detail including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, for "enhanced" I/M programs, the SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The SIP revision for Western Michigan requires biennial inspections for all subject motor vehicles. For new vehicles, the first test is required for re-registration, 2 years after initial titling.

For vehicles already titled at the time of program start-up, inspections are required within 30 days prior to the anniversary of initial titling. Newly registered used vehicles are required to be inspected within thirty days of being registered initially in the State. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process which is explained in the SIP submittal. The authority for the enforcement of the testing frequency is contained in the Western Michigan I/M legislation.

Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its managing contractor. The State is contractually requiring that the monthly average waiting time shall not exceed 15 minutes more than 4 times in a month. In addition, the location of stations shall be such that 70 percent of the vehicle population must be within 5 miles of an inspection station, and that 90 percent of the vehicle population must be within 12 miles of an inspection station.

#### F. Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The Western Michigan program includes coverage of all 1975 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered or required to be registered within the nonattainment areas and fleets primarily operated within an I/M program area. Vehicles will be identified through the MDOT vehicle registration database. Only the following vehicles are exempt from the I/M requirement: historic vehicles, diesel vehicles, dedicated alternative fuel vehicles, electric vehicles, motorcycles, and vehicles used for covert monitoring of inspection station facilities. The State has estimated exempted vehicles to account for 0.3 percent of the total vehicle population.

The legal authority for the vehicle coverage is contained in the H.B. 4165.

#### G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance, or law describing and establishing the test procedures.

The Western Michigan I/M SIP obligates the State to do IM240 testing in accordance with the EPA's guidance document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" (Technical Guidance). The State will be requiring IM240 tests on 1981 and later model year vehicles. This model year coverage complies with the EPA's I/M regulation. All 1975 and later model year vehicles not receiving an IM240 test will receive a loaded 2 speed test in accordance with the EPA's test procedures contained in the appendices of the Federal I/M rule. The test procedures are specifically and legally established in the Request For Proposal (RFP), which the Western Michigan I/M contractor is required to abide by.

#### H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 57 FR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Western Michigan I/M SIP revision obligates the State to use the written equipment specifications contained in the EPA's IM240 Technical Guidance and appendices of the Federal I/M rule. Michigan's RFP sufficiently addresses the requirements in 40 FR 51.358 and includes descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are also mandated in the RFP.

#### I. Quality Control

The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The Western Michigan SIP narrative and RFP contain descriptions and requirements establishing the quality control procedures in accordance with

the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded as well as maintaining compliance document security. The quality control procedures manual is contained in the RFP. The Western Michigan SIP revision obligates the State to comply with all specifications for all quality control in accordance with the Federal I/M rule.

#### J. Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

The Western Michigan I/M program includes a waiver rate as a percentage of initially failed vehicles of 6 percent. This waiver rate is used in the modeling demonstration. In the SIP narrative, the State of Michigan commits to take corrective action if the actual waiver rate rises above 6 percent. The SIP provides for only 1 type of waiver, that being based on a minimum repair expenditure. This waiver is consistent with the Federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers will be ensured by MDOT and the managing contractor and are contained in the SIP narrative and RFP. The waiver criteria are contained in both the State's legislation and the RFP. The State has established a minimum \$300 expenditure for the issuance of a waiver. This minimum limit is in accordance with the CAA and Federal I/M rule.

#### K. Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process including: (1) a description of the existing compliance mechanism, if it is to be used in the future, and the demonstration that it is as effective or more effective than registration-denial

enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g., those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level, at a minimum, in practice.

The State has chosen to use registration-denial as its primary enforcement mechanism. Motorists will be denied vehicle registration unless the vehicle has complied with the I/M program requirements. The motorist compliance enforcement program will be implemented in part, by the MDOT in conjunction with the Michigan Department of State. The Michigan State Police and local police departments will take the lead in citing motorists who fail to comply with the registration requirement. In addition, parking meter attendants also have the authority to ticket parked vehicles with expired or otherwise invalid license plates.

Only the following vehicle types are exempt from the I/M requirement: historic vehicles, diesel vehicles, dedicated alternative fuel vehicles, electric vehicles, motorcycles, and vehicles used for covert monitoring of inspection station facilities. The State has estimated exempted vehicles to account for 0.3 percent of the total vehicle population.

Fleet vehicles, rental car fleets, and leased vehicles that do not receive an annual registration will be required to meet the same program requirements as all other vehicles that receive annual registration. The project compliance rate is estimated to be 97 percent. The State commits to revise the I/M SIP if the State fails to meet the 97 percent compliance rate.

The legal authority to implement and enforce the program is included in H.B. 4165.

#### *L. Motorist Compliance Enforcement Program Oversight*

The SIP needs to include a description of enforcement program oversight and information management activities.

The Western Michigan SIP revision provides for regular auditing of its enforcement program and the following of effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities are described in the SIP narrative and RFP which include: the establishment of written procedures for personnel engaged in I/M document handling and processing and the use of a bar-coded data entry system for tracking program documents.

However, the submittal does not include, for example, the procedures through which the activities of enforcement personnel are quality-controlled, as described in 40 CFR part 51.362. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.362 to EPA prior to final rulemaking.

#### *M. Quality Assurance*

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits.

The Western Michigan I/M SIP revision includes a description of its quality assurance program. The program includes operation and progress reports and overt and covert audits of all emission inspectors and emission inspection and referee facilities. The program will be conducted by a contractor with oversight provisions reserved to the State. Procedures and techniques for overt and covert performance, record, and equipment

audits will be given to auditors and updated as needed. In addition, all program auditors will themselves be audited at least once per year.

#### *N. Enforcement Against Contractors, Stations and Inspectors*

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of State constitutional impediments to immediate suspension authority, the State Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the 3 day case management requirement for violations that directly affect emission reductions.

The Western Michigan SIP revision incorporates an innovative method for ensuring that the I/M program will be run effectively. The State will require the contractor to become part of the MDOT's Total Quality Management (TQM) program.

However, while the State's submittal includes the legislative authority for enforcement against contractors, the submittal does not include, for example, a penalty schedule for those persons found in violation of the rules of the I/M program, as described in 40 CFR part 51.364. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR

part 51.364 to EPA prior to final rulemaking.

#### *O. Data Collection*

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR Part 51.359. The SIP needs to describe the types of data to be collected.

The Western Michigan I/M SIP revision provides for the collecting and storage of test data consistent with the Federal I/M rule. The information contained within each test report is such that it will be possible to unambiguously tie specific test results to a specific vehicle, test site, and inspector. The State also commits to gather, summarize, and report the results of quality control checks performed on testing equipment, sorted according to station number, system number, date, the concentration values of the calibration gases used and the start time of the quality control check.

#### *P. Data Analysis and Reporting*

Data analysis and reporting are required to allow for monitoring an evaluation of the program by the State and the EPA. The Federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control, and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to the EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the previous 2 year period and how these problems will be or were corrected.

Under the Western Michigan SIP revision, the State will address all the data elements and reporting requirements listed in 57 FR 51.366.

#### *Q. Inspector Training and Licensing or Certification*

The SIP needs to include a description of the training program, the written and "hands-on" tests, and the licensing or certification process.

The Western Michigan I/M SIP revision provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes

the program and curriculum which include written and "hands-on" testing at least every 2 years. All inspectors will be required to be certified to inspect vehicles in the Western Michigan I/M program.

#### *R. Public Information and Consumer Protection*

The SIP must include public information and consumer protection programs.

The Western Michigan SIP revision includes a provision in the RFP for the contractor to develop a public information program which educates the public on I/M, State and Federal regulations, air quality and the role of motor vehicles in the air pollution problem, and other items as described in the Federal rule. The consumer protection program includes a number of provisions for a challenge mechanism, protection of whistle blowers, and assistance to motorists in obtaining warranty covered repairs will also be further developed in the final contract.

However, the State's submittal does not include a provision to provide motorists that fail the emissions test to automatically receive test repair facility performance data and diagnostic information, as described in 40 CFR part 51.368. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.368 to EPA prior to final rulemaking.

#### *S. Improving Repair Effectiveness*

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for "enhanced" I/M programs, and a description of the repair technician training resources available in the community.

The Western Michigan I/M SIP revision includes a description of the technical assistance and repair technician training programs to be implemented. The State has committed to meeting the applicable technical assistance requirements of 40 CFR part 51.369, and to that end require the contract to be entered into will sufficiently address the Federal I/M rule requirements. The MDOT will also ensure that a repair technician hotline will be available for repair technicians. The State will also ensure that adequate repair technician training exists prior to the beginning of testing in January 1995.

However the submittal does not provide for a system of repair facility performance monitoring, as described in 40 CFR part 51.369. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.369 to EPA prior to final rulemaking.

#### *T. Compliance with Recall Notices*

For areas implementing "enhanced" I/M programs, the SIP needs to describe the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The State's submittal does not sufficiently address all the aspects of this requirement as described in 40 CFR part 51.370. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to

conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.370 to EPA prior to final rulemaking.

#### *U. On-road Testing*

For areas that are classified as serious or above for ozone nonattainment, the SIP needs to include a detailed description of the on-road testing program.

Because the nonattainment areas in Western Michigan are classified as moderate, this particular I/M requirement is not applicable to the Western Michigan I/M program. However, the State does have the authority to implement on-road testing on a discretionary basis.

#### *V. State Implementation Plan Submissions/Implementation Deadlines*

The Federal I/M rule requires areas starting new test-only programs to be fully implemented by January 1, 1995.

The Western Michigan I/M SIP revision provides that the program will begin operation by January 1, 1995.

#### *T. Concluding Statement*

A more detailed analysis of the State's submittal and how it meets the Federal requirements is contained in the EPA's TSD dated May 31, 1994, which is available from the Region 5 office listed above. The criteria used to review the submitted SIP revision are based on the requirements stated in section 182 of the CAA and the Federal I/M regulations. Based on these requirements, the EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the Federal I/M rule. This checklist, based on the CAA and Federal I/M regulations, formed the primary basis for the EPA's technical review.

The EPA has reviewed the Western Michigan I/M SIP revision submitted to the EPA, using the criteria stated above. The H.B. 4165, RFP, and accompanying materials contained in the SIP represent an acceptable approach to the I/M requirements and meet all the criteria required for approvability with the exceptions noted above.

#### **Proposed Action**

The EPA is proposing to approve portions the Western Michigan I/M SIP

revision as meeting the requirements of the CAA and the Federal I/M rule and for the deficient portions of the State's submittal noted above, approve those portions which the State submits 2 weeks before the close of the official comment period and conditionally approve those portions which the State submits a commitment to complete within 1 year of EPA's final rulemaking, or alternatively if the State takes neither of the above actions to remedy the submittal's deficiencies, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. The EPA requests comments on this proposal including the EPA's proposal to approve the I/M SIP for Western Michigan as meeting the requirements of the CAA and Federal I/M rule. As indicated at the outset of this action, the EPA will consider any comments received by [insert date 30 days from date of publication] and make the TSD available upon request.

### I. Basis for Conditional Approval

The EPA believes conditional approval is appropriate in this case because the State has developed final, fully adopted legislative authority for the "enhanced" I/M program and needs only to supplement its submittal to address a number of the I/M program requirements. As a condition of EPA's proposed conditional approval, the State must submit a final, fully adopted contract or rules to EPA no later than 1 year after EPA's final conditional approval.

### II. Statement of Approvability

Under the authority of the Governor, the MDNR submitted a SIP revision to satisfy the requirements of the I/M regulation to the EPA on November 15, 1993. The Agency has reviewed this submittal and is proposing to approve portions and proposing to conditionally approve other portions of it pursuant to Sections 110(k) of the Act, on the condition that the portions of the I/M program noted above are adopted and/or submitted on the schedules noted in this proposed rulemaking.

If the State fails to timely submit the required regulations and other material or commit to do so within 1 year of EPA's final conditional approval, EPA proposes in the alternative to disapprove the SIP as failing to comply with section 110 and Part D.

If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit the final rule or contract amendments within 1 year of the conditional approval. Once the EPA has conditionally approved this committal,

if the State fails to adopt or submit the required rules or contract to EPA, final approval will become a disapproval. EPA will notify the State by letter to this effect. Once the SIP has been disapproved, these commitments will no longer be a part of the approved nonattainment area SIPs. The EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the SIP. If the State adopts and submits the final rule or contract amendments to the EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA approves the subsequent submittal, those newly approved rules or contract will become a part of the SIP.

If after considering comments on the proposal, the EPA issues a final disapproval or if the conditional approval portions are converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin on the effective date of the final disapproval or at the time the EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and the EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the EPA must impose 1 of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after a final disapproval.

### Procedural Background

The OMB has exempted this rule from the requirements of section 6 of Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the 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, the 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 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, 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the 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).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

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

Dated: July 6, 1994.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 94-17299 Filed 7-14-94; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 52

[PA25-1-5694; FRL-5013-6]

### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania—Emission Statement Program

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of implementing an emission statement program for stationary sources applicable in the entire Commonwealth of Pennsylvania. The SIP revision was submitted by the Commonwealth to satisfy the federal requirements for an emission statement program as part of the SIP for the Commonwealth of Pennsylvania.

**DATES:** Comments on this proposed action must be received in writing by August 15, 1994.

**ADDRESSES:** Comments must be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the Commonwealth's submittal and other information are available for public inspection during