

review nor does it extend the time within which a petition for judicial review must 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)).

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 21, 1994.
William P. Yellowtail,
Regional Administrator.

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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(60) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(60) Revisions to the Long-Term Strategy of the Colorado State Implementation Plan for Class I Visibility Protection were submitted by the Governor in a letter dated November 18, 1992. The submittal completely replaces the previous version of the Long-Term Strategy and includes amendments to Air Quality Control Commission Regulation No. 3, "Air Contaminant Emissions Notices."

(i) Incorporation by reference.

(A) Revisions to the Visibility Chapter of Regulation No. 3 as follows: XV.F.1.c. as adopted on August 20, 1992, and effective on September 30, 1992.

3. Section 52.344 (a) is revised to read as follows:

§ 52.344 Visibility protection.

(a) A revision to the SIP was submitted by the Governor on December 21, 1987, for visibility general plan

requirements, monitoring, and long-term strategies.

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40 CFR Part 52
[MI29-02-6658; FRL-5079-1]

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: Final rule.

SUMMARY: In this action, the EPA is approving a revision to the Michigan State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 12, 1993 and on July 19, 1994 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 (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. On July 15, 1994, the EPA published a notice of proposed rulemaking (NPRM) for the State of Michigan. The NPRM proposed approval of the Michigan I/M SIP provided that the State submitted materials sufficient to address the deficiencies found in the original submittal. No public comments were received on the NPRM and the State submitted materials sufficient to remedy all the deficiencies in the original submittal, therefore, the EPA is publishing this final action.

EFFECTIVE DATE: This rule will become effective on November 10, 1994.

ADDRESSES: Copies of the State's submittals and the EPA's technical support document (TSD) are available for public review at U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson, at the EPA, Region 5, (312) 353-4779.

SUPPLEMENTARY INFORMATION

I. Introduction

The Act 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 Act) or worse with an existing I/M program that was part of the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in the past the 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 Act 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 through 81.437.

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 Part 51, appendix V) and the requirements of section 110(k) of the Act, the submittal, as it applies to Western Michigan, was deemed complete by the EPA on April 18, 1994.

In its original review, the EPA found several areas in the State's submittal that did not meet the requirements of the I/M rule. The sections of the State's submittal found to be insufficient included: Motorist compliance enforcement program oversight; enforcement against contractors, stations, and inspectors; public information and consumer protection; improving repair effectiveness; and compliance with recall notices.

While the EPA found the State's submittal deficient in several respects, the EPA published on July 15, 1994 at 59 FR a document 36123 proposing to approve the majority of the State's submittal, and to conditionally approve or disapprove the insufficient sections of the original submittal unless necessary, appropriate, and approvable materials were submitted by the State 2 weeks prior to the close of the public comment period.

III. State's Supplemental Submittal

On July 19, 1994 the Michigan Department of Natural Resources (MDNR) submitted supplementary materials to the EPA related to the I/M program in Western Michigan. The supplementary submittal was made to remedy the deficiencies in the State's original submittal.

IV. The EPA's Analysis of the State's Supplemental Submittal

The EPA has reviewed the State's supplemental submittal for consistency with the statutory requirements of the EPA regulations. A summary of the EPA's analysis is provided below. The following summary is limited to the sections of the State's original submittal that were deficient. For a discussion of the rest of the State's submittal, see the July 15, 1994 (59 FR 36123) NPRM.

A. Motorist Compliance Enforcement Program Oversight

While the original submittal addressed some of the required elements of this section (40 CFR 51.362), it did not fully satisfy all the elements, in particular procedures through which the activities of enforcement personnel are quality-controlled.

However, the State's original and supplemental submittals taken together provide an approvable basis for this

section. The original and supplemental submittals provide for regular auditing of the State's 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 State's submittals and include: the establishment of written procedures for personnel engaged in I/M document handling and processing and an I/M database which will be compared to the registration database to determine program effectiveness.

B. Enforcement Against Contractors, Stations and Inspectors

While the initial SIP submittal established an innovative Total Quality Management (TQM) program for ensuring that the I/M program will be run effectively, the submittal did not satisfy all the elements of the I/M rule, 40 CFR 51.364.

The State's supplemental submittal together with the original submittal, however, includes sufficient materials to approve this section. The original and supplemental submittals, in addition to the TQM program, include specific penalties for offenses committed by contractors, stations, and inspectors in accordance with the Federal I/M rule. The SIP also includes the State's enforcement procedures. The MDOT has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. The enforcement procedures also include the authority to immediately dismiss inspectors that intentionally cause a vehicle to improperly pass or fail.

C. Public Information and Consumer Protection

The State's original submission addressed all the elements of this section (40 CFR 51.368), except for a provision to automatically supply test repair facility performance data and diagnostic information to motorists that fail the emissions test.

However, the supplemental submittal details the information that will be provided to motorists that fail the emissions test, including test repair facility performance data and diagnostic information. Therefore, taken together, the original and supplemental submittals sufficiently address all the elements of this section.

D. Improving Repair Effectiveness

The original submittal sufficiently addressed all the elements of the section (40 CFR 51.369), except for the issue of repair facility performance monitoring.

The State's supplemental submittal, however, provides the necessary materials to establish an acceptable system of repair facility performance monitoring. The supplemental submittal establishes a program to provide motorists whose vehicles fail the I/M test with performance monitoring statistics of certified repair facilities. Therefore, the supplemental submittal together with the original submittal sufficiently addresses all the elements of this section.

E. Compliance with Recall Notices

The State's original submittal did not sufficiently address the elements required by this section, 40 CFR 51.370.

However the State's supplemental submission along with the original submittal provides a sufficient basis for approval of this section. The original and supplemental submittals ensure that vehicles included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA, have had the appropriate repair made prior to the inspection. The managing contractor will identify vehicles which have not been identified as having completed recall repairs. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. The SIP also commits to comply with the policies of the National Recall Committee and additional the EPA rulemaking when available.

F. Concluding Statement

The EPA has reviewed the Western Michigan I/M SIP revision submitted to the EPA, using the criteria stated above. The State's original submittal along with the supplemental submittal represent an acceptable approach to the I/M requirements and meet all the criteria required for approvability.

A more detailed analysis of the State's supplemental submittal and how it meets Federal requirements is contained in the EPA's Technical Support Document (TSD), dated August 30, 1994 which is available from the Region 5 Office, listed above.

V. Response to Comments

On July 15, 1994 (59 FR 36123), the EPA published an NPRM for the State of Michigan. The NPRM proposed approval in part, and conditional approval or disapproval depending upon the materials submitted by the State 2 weeks prior to close of the comment period. No public comments were received on the NPRM.

Final Action

By this action, the EPA is fully approving this submittal. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA regulations and finds it to be acceptable. The rationale for the EPA's action is explained in the NPRM and will not be restated here.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures published in the FR on January 19, 1989 (54 FR 2214), and revisions to these procedures issued on October 4, 1993 in an the EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables."

Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the FR 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 Office of Management and Budget has exempted this action from Executive Order 12866 review.

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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 15, 1994.

Robert Springer,

Acting 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 52.1170 is amended by adding paragraph (c)(97) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(97) On November 12, 1993, the State of Michigan submitted a revision to the State Implementation Plan (SIP) for the implementation of a motor vehicle inspection and maintenance (I/M) program in the Grand Rapids and Muskegon ozone nonattainment areas. This revision included House Bill No. 4165 which establishes an I/M program in Western Michigan, SIP narrative, and the State's Request for Proposal (RFP) for implementation of the program. House Bill No. 4165 was signed and effective on November 13, 1993.

(i) Incorporation by reference.

(A) House Bill No. 4165; signed and effective November 13, 1993.

(ii) Additional materials.

(A) SIP narrative plan titled "Motor Vehicle Emissions Inspection and Maintenance Program for Southeast Michigan, Grand Rapids MSA, and Muskegon MSA Moderate Nonattainment Areas," submitted to the EPA on November 12, 1993.

(B) RFP, submitted along with the SIP narrative on November 12, 1993.

(C) Supplemental materials, submitted on July 19, 1994, in a letter to EPA.

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40 CFR Part 52

[TX-44-1-6665, FRL-5088-4]

Transportation Conformity; Petition for Exemption From Nitrogen Oxides Provisions, Victoria County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: The EPA published without prior proposal a **Federal Register** notice approving a petition from the State of Texas requesting that Victoria County, an incomplete data ozone nonattainment area, be exempted from the requirement to perform the oxides of nitrogen (NOx) portion of the build/no-build test required by the Federal transportation conformity rule. This petition for exemption was submitted by the State of Texas on May 4, 1994. EPA's direct final approval was published on August 12, 1994 (59 FR 41416).

The EPA subsequently received adverse comments on the action. Accordingly, the EPA is withdrawing its direct final approval. All public comments received will be addressed in a subsequent final rule.

EFFECTIVE DATE: This withdrawal will be effective on October 11, 1994.

ADDRESSES: Copies of the petition submitted by the State of Texas and other information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Anyone wishing to review this petition at the U.S. EPA Region 6 office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T-AP), EPA Region 6, telephone (214) 665-7219.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, and Volatile organic compounds.

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

Therefore, the final rule appearing at 59 FR 41416, August 12, 1994, which was to become effective October 11, 1994, is withdrawn.