

address: (It is recommended that you telephone Charles Hatten at (312) 886-6031 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Charles Hatten (312) 886-6031.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this *Federal Register*.

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

Dated: May 18, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-14534 Filed 6-14-94; 8:45 am]

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40 CFR Part 52

[MI19-01-5990; FRL-4999-2]

Disapproval of Clean Air Act PM Implementation Plan for Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The USEPA today proposes disapproval of the State Implementation Plan (SIP) submitted by the State of Michigan for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM), because USEPA finds unapprovable provisions in the consent orders submitted as part of the SIP revision. The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area PM SIP for Wayne County, Michigan.

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

ADDRESSES: Comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: (It is recommended that you telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.) United States Environmental Protection

Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT-18), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 353-8328.

SUPPLEMENTARY INFORMATION:

I. Background

Michigan was previously required to modify its particulate matter SIP by the Clean Air Act Amendments of 1977. On May 22, 1981 (46 FR 27923), USEPA conditionally approved portions of Michigan's part D Total Suspended Particulates (TSP) SIP. In response to USEPA's conditional approval the Michigan Department of Natural Resources (MDNR) submitted on May 17, 1985 revised rules, which were effective at the State level on February 22, 1985 to control TSP from iron and steel sources and from other sources in the State.

On August 7, 1987 (52 FR 29383), USEPA categorized areas of the Nation into three groups based on the likelihood that protection of the PM NAAQS would require revision of the existing SIP. The USEPA identified the entire Wayne County, Michigan area as a PM "Group I" area of concern, i.e., an area with a strong likelihood of violating the PM NAAQS and requiring substantial SIP revision. This Group I area was reduced in size on October 31, 1990 and was subsequently designated nonattainment for PM (55 FR 45799), and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.¹ See 56 FR 56694 (November 6, 1991).

On June 11, 1992 (57 FR 24752), USEPA published a final rule which approved certain sections of the State's May 17, 1985 submittal, because the submittal represented an overall strengthening of the existing Michigan SIP and would contribute to general improvement of ambient air quality statewide, and disapproved other sections.

The amended Act required moderate PM nonattainment area SIP submittals

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

by November 15, 1991. On November 19, 1991 USEPA received revisions to the Michigan SIP for the Wayne County PM nonattainment area. The USEPA reviewed the submittal for completeness and found the submittal to be incomplete. The USEPA made a finding pursuant to section 110(k)(1)(C) of the Act that the State failed to submit a complete SIP and notified the Governor in a letter dated December 17, 1991. See 57 FR 19906 (May 8, 1992). The USEPA's finding of incompleteness activated the 18-month clock which could have resulted in the imposition of sanctions pursuant to section 179 of the Act. On June 11, 1993 the State submitted to USEPA new revisions for the Wayne County PM nonattainment area SIP. The submittal was found to be complete pursuant to section 110(k)(1) of the Act and USEPA notified the State accordingly. This completeness determination corrected the State's deficiency under section 179 of the Act and, therefore, discharged the 18-month sanctions clock.

On April 7, 1994 the State submitted to USEPA a SIP revision for the Marblehead Lime Company, River Rouge, Michigan. This submittal supersedes the portion of the June 11, 1993 Wayne County PM nonattainment area SIP submittal applicable to the Marblehead Lime, River Rouge facility.

The air quality planning requirements for moderate PM nonattainment areas are set out in subparts 1 and 4 of title I of the Act.² The USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Michigan moderate PM SIP, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any timely

² Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM also apply to major stationary sources of PM precursors except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM by June 30, 1992 (see section 189(a)). Such States also were to submit contingency measures by November 15, 1993 which become effective without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve RFP or to attain the PM NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543-13544. These provisions will be addressed in separate rulemaking actions.

II. In This Action

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565-113566). In this action, USEPA is proposing to disapprove the SIP revision submitted by the State of Michigan to USEPA on June 11, 1993 which completed the attainment plan for Wayne County, because it does not meet all of the applicable requirements

of the Act. The USEPA will consider any comments submitted during the public comment period before taking final action on today's proposal.

A. Analysis of State Submission

The State's June 11, 1993 submittal consisted primarily of 31 consent orders between the State and PM sources. The air quality dispersion modeling conducted is based upon control measures, limitations, and conditions contained in these orders. The USEPA is proposing to disapprove the State's submittal because USEPA finds unacceptable language in the consent orders submitted for approval into the Michigan SIP. If the State removes the unacceptable language, or replaces it with the previously approved version as detailed below, and submits revised consent orders, the proposed disapproval will be changed to an approval when USEPA takes final action on this submittal.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.³ See also section 110(l) of the Act. The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action (see section 110(k)(1) and 57 FR 13565). The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by USEPA 6 months after receipt of the submission.

The State of Michigan held a public hearing on March 30, 1993 to receive public comment on the implementation plan for the Wayne County nonattainment area. Following the public hearing the plan was adopted by the State and signed by the Governor's designee and submitted to USEPA on June 11, 1993 as a proposed revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance

³ Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated June 30, 1993 was forwarded to the Director, Michigan Department of Natural Resources, indicating the completeness of the submittal and the next steps to be taken in the review process. The State's submittal of a complete SIP stopped the sanctions clock triggered by USEPA's December 17, 1991 finding that Michigan's November 15, 1991 submittal was incomplete. As noted in today's action USEPA proposes to disapprove the Michigan PM SIP submittal for Wayne County.

In addition, the State of Michigan held a public hearing on February 16, 1994 to receive public comment on the implementation plan revision for the Marblehead Lime Company, River Rouge, Michigan. Following the public hearing the plan was adopted by the State and signed by the Governor's designee and submitted to USEPA on April 7, 1994 as a proposed revision to the June 11, 1993 SIP submittal applicable to the Marblehead Lime, River Rouge facility.

2. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The State provided thorough documentation of its emissions estimates for all sources in the nonattainment area for a 1985 base year. The Wayne County area was shown to include 31 facilities. The allowable emission rates were calculated based on limits contained in Michigan's part 3 Air Pollution Particulate Regulations, limits contained in State permits, and limits contained in State consent orders. Emissions from roadways and other area source types are estimated in accordance with procedures specified in AP-42 and USEPA's guidance document, "Control of Open Fugitive Dust Sources", using inputs that are judged to provide reasonable estimates of these emissions.

The significant sources in the nonattainment area are: (1) Stack sources; (2) process fugitive emissions; and (3) area sources such as roadways and storage piles. The majority of the facilities in the nonattainment area were able to demonstrate attainment of the PM NAAQS with RACT level of control. For facilities where this RACT level of control was insufficient to demonstrate attainment, certain limits were lowered, and various operating conditions were modified to secure enough additional reductions to demonstrate attainment. Refinements to existing fugitive dust plans were made according to the control efficiencies predicted by USEPA's "Open Fugitive Dust Source Computer Model". These emission limits, production limits, and fugitive dust plans are incorporated into the consent orders submitted for approval into the Michigan SIP. For further details see the Technical Support Document (TSD).

The USEPA finds that the emissions inventory generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.⁴

3. RACM (Including RACT)

As noted, the initial moderate PM nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of USEPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-13545 and 13560-13561).

The USEPA has previously judged that existing TSP regulations applicable to point sources and contained in part 3 of Michigan's Air Pollution Control Commission Rules provide for RACT and have already been incorporated into the Michigan SIP (57 FR 24752, June 11, 1992). The attainment needs of this area are such that additional measures as provided in the current submittal may be considered reasonably available. At the same time, further controls beyond those required in the submittal and necessary for assuring attainment would not be considered reasonable, unless those measures would provide for

⁴The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM-10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

earlier attainment. (See the General Preamble at 57 FR 13560).

For fugitive dust sources, generic RACT control efficiencies were applied to potential emissions based on whether a facility had, and was implementing, a fugitive dust plan submitted to and approved by the Air Pollution Control Commission⁵. The generic RACT efficiencies and their percent control, as recommended by the Wayne County Air Pollution Control Division, are: unpaved roads and lots, 75 percent; paved roads and lots, 35 percent; and storage piles and storage pile activities, 50 percent.

The USEPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. The consent orders in Michigan's submittal provide for compliance by October 1, 1993 and the implementation of the nonattainment plan control strategy will result in the attainment of the PM NAAQS by December 31, 1994, therefore satisfying the requirements of sections 172(c)(1) and 189(a)(1)(C) of the Act.

4. Demonstration of Attainment

As noted, the initial moderate PM nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

The MDNR conducted an attainment demonstration using dispersion modeling for the Wayne County nonattainment area. This demonstration indicates that the NAAQS for PM will be attained by 1994 in Wayne County and maintained in future years. The 24-hour PM NAAQS is 150 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$ is equal to or less than one. See 40 CFR 50.6. The annual PM NAAQS is $50 \mu\text{g}/\text{m}^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to $50 \mu\text{g}/\text{m}^3$. The dispersion modeling in the demonstration predicted $146.3 \mu\text{g}/\text{m}^3$ as the 24-hour design concentration, thus demonstrating attainment of the 24-hour PM NAAQS. The dispersion modeling in the demonstration predicted $49.5 \mu\text{g}/\text{m}^3$ as the annual design concentration,

⁵Michigan eliminated the Air Pollution Control Division in a recent reorganization. MDNR now handles the responsibilities of the former division.

thus demonstrating attainment of the annual PM NAAQS. The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)".

Several factors help assure that the Wayne County nonattainment area will maintain as well as attain the standard. First, a substantial majority of emissions in the area are from industrial sources and were modeled either with maximum allowable emissions (for point sources) or with emissions at the sources' full capacity operation (for area sources). Thus, the only opportunities for growth in the inventory beyond the modeled inventory are new source construction and growth in public area sources. The new source review program assures that new sources will not create violations of the air quality standards. For public area source emissions, the Southeast Michigan Council of Governments (SEMCOG) compiled estimates of daily vehicle miles traveled (VMT) in Wayne County for a 1985 base year. To account for VMT growth in Wayne County, SEMCOG reran their transportation models for the year 2005. The resulting VMT projections were compared to the 1985 base year case and showed a net increase in PM emissions. The increase in emissions, however, has already been accounted for in the attainment demonstration. Michigan's modeling analysis, reflecting emissions in 2005, yielded a design value of $146.3 \mu\text{g}/\text{m}^3$. Extrapolating back to 1994 would yield a design value of $146.1 \mu\text{g}/\text{m}^3$. Therefore, the State of Michigan has demonstrated maintenance of the air quality standard of $150 \mu\text{g}/\text{m}^3$ through the year 2005. See the TSD for a more detailed description of the attainment demonstration and the control strategy used.

5. PM Precursors

The control requirements which are applicable to major stationary sources of PM, also apply to major stationary sources of PM precursors unless USEPA determines such sources do not contribute significantly to PM levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Wayne County nonattainment area indicates that exceedances of the NAAQS are attributable solely to direct PM emissions from stack sources, process fugitive emissions, and area sources such as roadways and storage piles, and not sources of PM precursors. Consequently, USEPA is proposing to find that major sources of precursors of

PM do not contribute significantly to PM levels in excess of the NAAQS. The consequences of this finding are to exclude these sources from the applicability of PM nonattainment area control requirements. Note that while USEPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The USEPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

As discussed in the General Preamble (57 FR 13539), attainment plans for moderate areas which demonstrate attainment by December 31, 1994 will satisfy the initial quantitative milestone requirement. The consent orders included in Michigan's SIP submittal require compliance by October 1, 1993. Given this requirement and the fact that Wayne County demonstrates attainment by 1994, USEPA believes the State's submission clearly satisfies the initial quantitative milestone requirement and demonstrates RFP.

7. Enforceability Issues

Sections 110(a)(2)(A) and 172(c)(6) of the Act, 42 U.S.C. 7410(a)(2)(A) and 7502(c)(6), require that each SIP include emission limitations and other control measures, means or techniques, and schedules or timetables for compliance which are enforceable by the State and by USEPA. See also 57 FR 13556. In addition, States must include in their nonattainment area SIPs a program to provide for the enforcement of the measures described in the SIP. 42 U.S.C. 7410(a)(2)(C). The USEPA criteria addressing the enforceability of SIPs and SIP revisions were provided in a September 23, 1987 memorandum (with attachments) from Craig Potter,

Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541).

The State of Michigan identified in its submittal particular control measures for stack sources, process fugitive dust emissions, and area sources such as roadways and storage piles. These control measures are addressed in the section entitled "RACM (including RACT)," above. In its submittal, the State specifies how each control measure or limit is made enforceable. The majority of the control measures are contained in the existing TSP regulations and, therefore, are enforceable as part of the existing Michigan SIP. Some of the control measures and applicable recordkeeping requirements, particularly those dealing with area sources of PM, are contained in the 31 consent orders which the State has requested that USEPA approve as part of the Michigan SIP.

The USEPA finds the consent orders are not approvable as part of the Michigan SIP for two reasons. First, each of the 31 consent orders contains a provision (paragraph 11) which allows for the substitution of "equivalent" particulate and fugitive dust control measures. The consent orders provide that a company subject to an order may revise the control programs contained in the order provided that, among other things, neither MDNR nor USEPA objects to the revision within 45 days of receipt of the proposal. The USEPA finds that this means of modifying the control requirements contained in a consent order, which would also (if approved) become part of the Michigan SIP, is inappropriate because it bypasses the Act's substantive and procedural requirements for SIP revisions. See sections 110(a)(2) and 110(i) of the Act, 42 U.S.C. 7410(a)(2) and 7410(i).⁶

By letter dated October 5, 1992 USEPA Region 5 informed MDNR that it could provide sources some flexibility by revising paragraph 11 to permit use of those measures specifically outlined in USEPA's PM-10 Open Fugitive Dust Source Computer Model Package (EPA-450/3-90-010). More details on this mechanism are provided in the October 5, 1992 letter and USEPA's TSD. In its submission, however, Michigan did not revise the orders to include this suggested approach.

⁶ It should be noted that USEPA regulations promulgated pursuant to title V of the Act contain provisions under which alternative, equivalent emission limits may be incorporated in a title V permit. See 40 CFR 70.6(a)(iii). However, these provisions are applicable solely in the context of title V permits, and then only if the specific requirements in that rule have been met. The USEPA further notes that Michigan does not presently have a federally approved title V program.

Consistent with the above, if, during the public comment period, MDNR revises paragraph 11 to delete the provision for substitution of "equivalent" measures, this portion of the consent orders may be approved. In the alternative, MDNR may permit the use of the measures identified in the Agency's fugitive dust model, in lieu of the provision for substitution of "equivalent" measures, in accordance with USEPA's October 5, 1992 letter.

In addition, each of the 31 consent orders provides for termination upon the issuance of an operating permit pursuant to title V of the Act (paragraph 12). Each title V operating permit, however, must include all Clean Air Act provisions necessary to assure compliance with the applicable requirements of the Act, including those in the SIP. See 42 U.S.C. 7661c(a). Therefore, the requirements contained in the title V operating permit are to be those substantive requirements applicable under other provisions of the Act, such as the SIP. For that reason, the consent orders must not expire, even following issuance of the operating permits.⁷ The TSD contains further information on the enforceability of the consent orders.

8. Ligninsulfonate Dust Suppressant

As stated earlier, MDNR used USEPA's "Open Fugitive Dust Source Computer Model" to determine control efficiencies for various combinations of chemical application rates and treatment frequencies applicable to fugitive dust roadway emissions. The model lists watering or chemical suppressants as two possible control options for unpaved roads. Average efficiency curves were generated for four chemical dust suppressants and, because there was little data available at the time, the program was designed to be very general without any reference to a specific chemical or brand name. The model allows for comparisons between watering and chemicals, and between the chemicals originally considered in the generation of the model, but not for the substitution of suppressants other than the four types originally considered by the model. Ligninsulfonate was not one of the four chemicals originally evaluated by USEPA's model.

⁷ The USEPA would not consider a valid termination of the consent orders included in the SIP to have occurred unless and until: The State issues a title V permit that contains the provisions in the consent order; the State submits to USEPA a SIP revision providing for replacement of the consent order with the substitute permit; and USEPA approves the permit provisions as a SIP revision.

Ligninsulfonate has been utilized as a dust suppressant since the early 1900's in Sweden and its use in this country dates to the 1940's. Only one company in the nonattainment area (Levy, at five locations) currently uses ligninsulfonate for dust suppression. The MDNR investigated the relationship between the control efficiencies for lignin suppressants relative to the ones considered in the computer model to correlate the use of lignins to the use of the original four suppressants. MDNR determined that if lignins are applied at a chemical rate 2.3 times that of the chemicals considered in USEPA's computer model, then the efficiency predicted by the model can be applied to uncontrolled emission rates from unpaved roads being treated with ligninsulfonate given equal treatment frequencies. The USEPA believes that the data that has been submitted by the State of Michigan is comparable to the original data used to determine the control efficiencies of the dust suppressants included in the model, and, therefore, is adequate to technically support the use of ligninsulfonate as an alternative suppressant. See the TSD for further details.

9. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures. See generally 57 FR 13543-13544. These measures should consist of other available measures that are not part of the area's control strategy and must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the PM NAAQS by the applicable statutory deadline. As noted, States with initial moderate nonattainment areas were not required to submit the contingency measures required in section 172(c)(9), until November 15, 1993. The USEPA will determine the adequacy of such submittal as appropriate in a separate rulemaking.

III. Implications of This Action

The USEPA is proposing to disapprove in its entirety the SIP revision submitted by the State of Michigan on June 11, 1993 for the Wayne County PM nonattainment area because USEPA finds unapprovable provisions in each of the 31 consent orders submitted as part of the SIP revision. If the State removes the unacceptable language in paragraph 11, or replaces it with the previously approved version mentioned above, and removes paragraph 12 in each of the 31

consent orders, and submits revised consent orders which USEPA finds acceptable, the proposed disapproval would be changed to an approval when USEPA takes final action on this submittal. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566-13567). As provided under section 179(a) of the Act, the State of Michigan would have up to 18 months after a final SIP disapproval to correct the deficiency that is the subject of the disapproval before USEPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance.

IV. Request for Public Comments

The USEPA is requesting comments on all aspects of today's proposal, including USEPA's proposed decision to impose the two to one new source review offset requirement as the first sanction should USEPA ultimately disapprove this submittal in whole or in part and the State fails to timely remedy the deficiency. As indicated at the outset of this document, USEPA will consider any comments received by July 15, 1994.

V. Executive Order 12866

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 Office of 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 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from E.O. 12866 review.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA may certify that the rule will not have a significant economic 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.

The USEPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 2, 1994.

Michelle D. Jordan,

Acting Regional Administrator.

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40 CFR Part 180

[OPP-300339/FRL-4780-6]

RIN No. 2070-AC18

Definitions and Interpretations; Oriental Radish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended to add EPA's interpretation for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity oriental radish. The proposed amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).