(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A veteran or servicemember not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 38 U.S.C. 3680(g))

(b) *Interruptions, terminations, or changes in hours of credit or attendance.* (1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a veteran or servicemember:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a veteran's or servicemember's hours of credit or attendance when:

(i) The veteran or servicemember is enrolled full time in a program of education for a standard term, quarter, or semester before the change;

(ii) The veteran or servicemember continues to be enrolled full time after the change; and

(iii) The tuition and fees charged to the servicemember have not been adjusted as a result of the change.

(Authority: 38 U.S.C. 3034, 3684)

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI 52–01–7260; FRL–5894–6]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of the requested revisions to the Michigan State Implementation Plan (SIP) for ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. The requested revisions are Michigan's Emissions Averaging and Emission Reduction Credit Trading Rules and supporting documents. These rules were submitted by the State of Michigan on April 17, 1996 as an optional revision to the SIP. The EPA has determined through its evaluation of the rules that they can be approvable upon submission of corrections to certain deficiencies that are identified in this notice.

DATES: Comments on this proposed action must be received by October 20, 1997.

ADDRESSES: Written comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and EPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Alexis Cain or Rick Tonielli before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Alexis Cain at (312) 886–7018 or Rick Tonielli at (312) 886–6068.

SUPPLEMENTARY INFORMATION:

I. Background

Michigan submitted these rules as a SIP revision to allow sources of emissions of ozone precursors (NO_X and VOCs) and non-ozone criteria pollutants (CO, SO_2, NO_2, PM–10 and lead) flexibility in complying with requirements already in the SIP. The program provides emissions sources with a financial incentive to reduce emissions below levels required by applicable Federal and State requirements and below their actual emissions of the recent past. Sources that make these extra reductions beyond requirements generate emission reduction credits (ERCs) that they can use later or sell to other sources. ERCs may be used by sources to comply with emissions limits. The program is not a means of limiting emissions; instead, trading and averaging are meant to provide an opportunity to comply with existing emission limits in a more cost effective manner. Michigan's emissions trading credit and averaging rules are not a required SIP submission under the Clean Air Act (the Act).

Outline of State Program

Michigan's SIP submittal includes both ''open market'' trading and emissions averaging. In an open market trading system, credits are first generated, then subsequently traded, so that generation and use of the credit are separated in time. Open market programs rely on continual credit generation to ensure that use of previously generated credits is balanced by generation of new credits, so that ''spikes'' in emissions are not created by credit use. Sources participating in an open market trading program generate discrete emission reductions, referred to as emission reduction credits (ERCs) in the Michigan program, by reducing emissions below a baseline over a discrete time period. The generation baseline is established by existing requirements, and is determined by the lower of allowable emissions or actual past emissions. Credits can either be used at a later time by the generator source or be sold to another source; the use of credits allows a source to emit above its emission limit while remaining in compliance.

The Michigan program also allows emissions averaging at sources that are subject to Reasonably Available Control Technology (RACT) requirements and are under common ownership and control. Under Michigan's emissions averaging provisions, one source can exceed a permitted emissions limit, as long as there is a simultaneous reduction, equaling 110 percent of the exceedance, at another source under the same ownership or control, but not necessarily at the same location. In both the open market and emission averaging provisions of Michigan's rule, 10 percent of the emission reductions generated are retired for an environmental benefit.

Sources can trade and average emissions of volatile organic compounds (VOCs) as a group, nitrogen oxides (NO_X), and all criteria pollutants other than ozone. VOC and NO_X ERCs must be designated as either ozone season or non-ozone season credits; VOC and NO_X ERCs generated outside of the ozone season cannot be used during the ozone season.

Under the Michigan plan, sources which generate ERCs or engage in emissions averaging must provide the Michigan Department of Environmental Quality (MDEQ) with a notice that includes information about the source

generating the reductions, the methods of generating the reductions, the amount of reductions, and the methods used to measure the reductions. An official representative of the source must certify that the information contained in the notice is ''true, accurate and complete,'' that the emission reductions generated are ''real, surplus, enforceable, permanent and quantifiable,'' and that the reductions have not been used elsewhere for averaging or credit generation. ERCs and averaging plans are not valid until MDEQ certifies that this notice is complete. The rule requires MDEQ to make a determination of completeness within 30 days. Similarly, sources which wish to trade or use ERCs must provide to MDEQ a notice which includes information about the source using the ERCs, the number of ERCs to be used, the requirements being complied with through the use of ERCs, and a copy of the generation notice for the ERCs that will be used. A responsible official must certify that the information is ''true, accurate, and complete'' and that the source will be operated in compliance with all applicable requirements, including requirements for the use of ERCs.

As mentioned previously, the Michigan program requires a retirement of 10 percent of ERCs generated, and of 10 percent of the reductions used in an emission averaging program, to create a benefit for the environment. In addition, VOC and NO_X ERCs are discounted 10 percent per ozone season. All ERCs expire five years after being generated.

Basis for Evaluation of SIP Revision

In 1994, EPA issued Economic Incentive Program (EIP) rules and guidance (40 CFR part 51, subpart U), which outlined requirements for establishing EIPs that States are required to adopt in some cases to meet the ozone and carbon monoxide standards in designated nonattainment areas. Michigan is not required to submit an EIP, so its emission trading and averaging program need not necessarily follow the EIP rule; however, subpart U also contains guidance on the development of voluntary EIPs.

The EPA has also published a proposed policy on open market trading programs (60 FR 39668, August 3, 1995) and a model open market trading rule (60 FR 44290, August 25, 1995), which will be published as guidance. This guidance will describe the elements of an open market trading program that EPA considers to be desirable, and those that are necessary for a program to be approvable as a SIP revision. As of this writing, this guidance has not been finalized. Moreover, Michigan began to develop its emissions trading program prior to the proposed guidance on open market trading. Therefore, EPA does not expect Michigan's rule to conform to this guidance.

Michigan's submittal is being evaluated on the basis of whether it meets the requirements of SIPs as described in section 110 of the Act. In particular, review focuses on whether the SIP as revised would be enforceable, whether the revision would negatively affect the SIP's ability to provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), whether it would protect against violations of Prevention of Significant Deterioration (PSD) increments, and whether it would violate any other provisions of the Act.

II. Analysis of State Submittal

A. Size of Tradable Units

Under Michigan's program, ERCs are denominated in tons, but not necessarily in whole tons. While the rule itself does not specify the fractions that can be used, MDEQ staff indicate that credits may be denominated in tenths of tons, if such precision is merited by the measurement accuracy of the quantification protocol. While it would be preferable from EPA's perspective to denominate all credits in whole tons, Michigan's procedure is acceptable. No procedure is identified in the rule for rounding the amount of credits generated or the amount used. The EPA would suggest specifying that ERC users round up to the nearest unit when determining the amount of ERCs needed, and ERC generators must round down to the nearest unit when determining the amount of ERCs generated. Although it is not specified in the rule, MDEQ staff have indicated that they will require use of a similar procedure.

B. Benefit Sharing With the Environment

Michigan appropriately requires that generators of ERCs retire 10 percent of the ERCs generated as an environmental benefit when providing notice of generation.

C. Trading of Oxides of Nitrogen

While the intent of the trading rules is clearly to allow trading of NO_X, the ozone precursor, as well as NO_2, the criteria pollutant, Rule 1203(2) indicates that the program ''applies only to volatile organic compounds as a class of compounds and all criteria pollutants, except ozone.'' In order to allow for trading of NO_X as well as NO_2, this statement must be changed to add NO_X to the list of compounds eligible for trading.

D. Claiming Ownership of ERCs

Michigan's rule does not include a discussion specifying which parties are eligible to generate credits in situations where more than one party has a potential claim. This issue is significant because the rights to credits generated by a particular credit generation strategy will be unclear in some cases. For instance, a manufacturer of a device that reduces automobile emissions might attempt to register credits based on the sale of the device within Michigan. However, an owner of a vehicle fleet might also attempt to register credits based on his or her installation of those same devices within the fleet. Registration of both sets of credits would double count the emission reductions, leading to excess credits being generated.

MDEQ must address the issue of ownership claims in its procedures for approving notices of credit generation. Guidance will be forthcoming on this issue from EPA.

E. ERC Generation Issues

1. ERC Generation Baseline

Rule 1207 explains how the baseline from which a source may generate credits is determined. Calculations must be based on the source's emissions over the most recent 2 years or most recent 2 ozone seasons, unless it can be shown that another time period is more representative of actual emissions. Measurement must be based on continuous emission monitoring (CEM) or parametric monitoring if required by applicable requirement or if practical and reasonable; otherwise, measurement for stationary sources will be based on emission monitoring methods specified by applicable requirement or approved by MDEQ. The baseline is calculated using an equation that includes the lower of the actual or allowable emission rate, a capacity utilization factor representative of the historical production rate of the source, and the average actual operating hours of the source.

The generation baseline is determined by the emissions that occurred prior to ''the initiation of an activity to reduce emissions for the purposes of creating emission reduction credits.'' [1] (Rule 1207(1)) However, Michigan's rule also

[1] For mobile source emissions, the baseline can be established by the emissions projected in the absence of an emissions reduction action, ''where a period of historical operations and actual emission data or activity levels cannot be used to determine emissions.'' (Rule 1207(2)(b)(3))

requires that reductions which generate ERCs be ''surplus,'' defined as ''those emission reductions made below an established source baseline which are not required in the state implementation plan, any applicable federal implementation plan, any applicable attainment demonstration, reasonable further progress plan, or maintenance plan and which are not mandated by any applicable requirement.'' Thus, the generation baseline must be adjusted to reflect new requirements.

The rules do not set any limit on the age of emissions data that can be used to establish a generation baseline, although the requirement to show that other data is more representative when not using the previous 2 years as a baseline should limit, in practice, how far back a source could go. The EPA strongly urges MDEQ to reject the use of any baseline calculated based on data from any date prior to November 15, 1990.

2. ERC Generation Start Date

Michigan's emissions trading rules allow credits to be generated from actions dating back to 1991, accruing starting in 1991. Allowing use of credits generated prior to enactment of the program has potentially troublesome aspects. Credits generated prior to enactment of the rule could flood the market, creating widespread use of cheap credits and discouraging the generation of new credits. With generation of new credits suppressed and abundant old credits in use, total emissions could exceed levels that would have occurred in the absence of the trading program.

However, several aspects of Michigan's program provide some protection against this potential problem. First, credits generated prior to enactment of the rules are discounted 50 percent, rather than the usual 10 percent. Second, credits last only 5 years beyond the time that the reductions occur. Therefore, reductions generated in the early 1990s will have a very limited life. Finally, credits generated from early reductions must be registered within 1 year of enactment—by March 17, 1997, a date which has already passed, allowing the State to determine immediately the total number of pre-enactment credits that are registered and in circulation.

While EPA would prefer that the program not allow credits to be generated prior to enactment of the trading rule, and that credits not be generated from actions taken more than 1 year prior to enactment, it is willing to accept Michigan's approach, contingent upon receipt from the State of the following: an accounting of the number of pre-enactment credits generated and the remaining life of these credits, and an analysis which demonstrates to EPA's satisfaction that the potential use of these credits is unlikely to have a detrimental effect on attainment or maintenance of the NAAQS or on any other requirement of the Clean Air Act.

3. Credit Generation Through Activity Level Reductions

Michigan's program allows stationary sources to generate ERCs through curtailing production, provided that the notice of generation is submitted prior to the curtailment of operations. It also allows sources which are shut down to generate ERCs for 5 years following the shutdown. Therefore, given the 5 year limit on ERC life, shutdown credits could be used a maximum of 10 years after the shutdown occurs.

Maintenance and attainment plans often rely upon emission reductions caused by production decreases at some sources (i.e., shutdowns and curtailments) to help counteract increased emissions caused by higher levels of production at sources subject to emission rate limits, where emission increases are allowed to occur when net production increases. Under Michigan's open-market trading system, however, while increases in production at sources with emission rate limits will still lead to emissions increases, production decreases will not generate offsetting emissions reductions, since the reductions resulting from production decreases can generate ERCs that are used to allow higher emissions elsewhere. Therefore, overall emissions may increase without a net increase in production under the trading program; this is clearly a detriment to the environment.

Another problem potentially created by use of shutdown credits is that load-shifting could occur among small sources such as gas stations or print shops. Such sources could reduce emissions and generate ERCs by shutting down or reducing production; however, the economic activity of these sources will likely be picked up by new or existing sources in the same areas, replacing the emissions for which ERCs were just given. Since emissions created by increased operating rates by other existing sources are not limited, and since new small sources are not subject to an offset or cap requirement, the net effect of allowing shutdowns and curtailments to generate ERCs would be to increase overall emissions. Michigan's rule 1207(5) provides protection against load-shifting among sources under common ownership or control. However, it does not protect against load shifting among sources under different ownership or control.

Moreover, allowing generation of ERCs from shutdowns and curtailments could lead to generation of ERCs from emissions reductions already relied upon in an attainment or maintenance plan, as mentioned previously. Attainment and maintenance plans represent an effort to prevent future violations of the NAAQS by projecting emissions increases that will result from economic growth, factoring in the net of shutdowns and curtailments, and insuring that emissions controls will constrain emissions adequately despite net economic growth.

In order to correct this deficiency, Michigan can pursue one of three options. The simplest and best option, from EPA's perspective, is to prohibit the generation of ERCs from shutdowns and curtailments. A second option is to prohibit the use of shutdown credits for compliance with federal requirements in any area that has or needs an approved attainment or maintenance demonstration. A third option is to prohibit the use of shutdown credits for compliance with federal requirements in any area that needs but lacks an approved attainment or maintenance demonstration, while demonstrating to EPA's satisfaction that none of Michigan's approved maintenance and attainment plans will be compromised by the use of these credits. To make this demonstration, it will be necessary to show that these plans do not rely in any way on emission reductions created by source retirements or curtailments, and that there is not an unacceptable level of risk that these credits would interfere with future attainment or maintenance requirements. If it decides to pursue this option, MDEQ must also seek public comment on this form of credit generation.

4. Overcompliance With an Alternative RACT Determination

Emissions sources which cannot comply with a RACT limit because it would not be technically feasible or economically reasonable can receive an alternate RACT determination. Serious equity concerns would be raised if such sources were allowed to generate credits by reducing emissions below their alternative emission limit, while other sources were required to base credit generation on their RACT limit. Therefore, Michigan's rule appropriately disallows the use of an alternative emission limit above an applicable RACT limit for the purpose of setting a baseline. A source that has an

alternative emission limit can generate credits only by reducing emissions below the RACT limit.

F. ERC Emission Reduction Quantification Protocols

The credibility of an emission trading program depends on the ability of sources and regulatory agencies to judge the value of the currency—in Michigan's case, the emissions reduction credits— used in the program. Thus, it is vital that the criteria used for judging the adequacy of emissions quantification protocols be clearly understood by all parties. Moreover, it is important that sources understand the elements of quantifying emissions reductions in an emission trading program (i.e., the need to establish a baseline, the need to ensure that reductions are not overestimated) that do not arise when quantifying emissions simply for the purpose of demonstrating compliance. In a program where no agency pre-certification of the validity of credits takes place, it is vital that the basis for an enforcement action against generators and users of bad credits be clearly delineated. Furthermore, while EPA does not wish to delay the use of emission trading for sources in categories that do not have EPA-approved quantification protocols, a source in a category that already has an EPA-approved protocol must use it, unless it gains EPA approval for use of an equally-good protocol.

Michigan's emission trading program already contains the requirement that emission reduction credits be real, surplus, enforceable, permanent, and quantifiable. In order to ensure that these criteria are met, Michigan must take two steps; first, incorporate into the emissions trading rules a requirement that sources in categories without EPA-approved protocols must follow a set of EPA-approved protocol development criteria that have been provided to MDEQ (Letter from David Kee to Dennis Drake, July 1, 1997) when developing protocols for their source category, and second, commit in the SIP to require use of existing and future EPA-approved protocols for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA.

G. Potential Uses of ERCs

1. RACT Compliance Alternative

The Michigan rule appropriately allows ERCs to be used as a RACT compliance alternative. The EPA recommends that in conjunction with its trading program, Michigan consider halting alternative RACT determinations/variances, given that ERCs provide an alternative means of compliance for sources that cannot otherwise meet RACT. At a minimum, the State should consider the cost and availability of ERCs when making economic feasibility-based alternative RACT determinations.

2. New Source Review Requirements

a. Synthetic minor sources: A ''synthetic minor'' source is one that has the potential to emit at major source levels defined by the New Source Review (NSR) program, but whose emissions are artificially limited by its permit to levels below those that would subject it to the major source requirements of NSR. Michigan's Rule 1204(6) allows a synthetic minor source to use ERCs to make a temporary increase in emissions that would bring its total emissions above the major source threshold, without making the source subject to the requirements that would normally apply to sources which exceed the threshold, such as New Source Review and Title V. This increase must not exceed major modification levels as specified in 40 CFR 52.21; ''temporary increase in emissions'' is defined in Rule 1201(ee) as an increase ''which occurs for less than 12 months and which does not occur more than once in a 24 month period.''

This provision is unacceptable because of its potentially serious environmental consequences. It would allow sources that would otherwise be required to undergo New Source Review to use emission reduction credits to avoid this requirement. For example, assume that a synthetic minor source with a potential to emit of 150 tons per year (tpy) has agreed to a limit of 90 tons per year in order to avoid major source status. Assume that this source wishes to increase its emissions to 117 tpy. Under the Michigan program, the source could purchase 27 tons of ERCs to compensate for the increase. The 27 tons would have been generated by a source or sources which reduced emissions by 30 tons, leading to the retirement of 10 percent of these reductions for an environmental benefit. Thus, the environment would see a net improvement of 3 tons from the trade.

In the absence of the trading program, however, a 90 tpy synthetic minor source that increases its production above 100 tpy would undergo New Source Review; as a result, the source would be required to comply with the provisions of Best Achievable Control Technology (BACT) or Lowest Achievable Emission Rate (LAER), which would frequently result in a reduction of the source's total emissions by an amount substantially larger than 3 tons. This loss of reductions means that the synthetic minor provisions of the Michigan rule could, in many cases, result in a significant loss of environmental benefit. In summary, emissions would be higher under the synthetic minor program than they would be without it, since the emission reductions required by BACT or LAER will usually be greater than the 10 percent reduction for the environment that a trading program would achieve.

The EPA's position is that ERCs may be used to comply with, but not to avoid, Clean Air Act requirements. This policy applies to New Source Review and Title V permit requirements. By allowing this use of ERCs to avoid a requirement, even temporarily, the trading rule allows emissions to be higher than they would be otherwise.

There is also an important legal basis for finding this provision to be deficient. According to 40 CFR 52.21(r)(4): ''At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.''

This deficiency can be corrected by removing Rule 1204(6) from the SIP submittal. In the absence of Rule 1204(6), synthetic minor sources in Michigan will be prevented from using trading to avoid requirements, but they will still be allowed to use trading to compensate for any emissions increases that would not trigger new requirements in the absence of the trading program.

b. Compliance with NSR and PSD Emission Limits: Michigan's rule prohibits the use of credits in place of installing equipment determined to constitute BACT or LAER requirements under the NSR program. However, credits can be used for compliance with the BACT or LAER emissions rate when the required equipment has been installed and is being properly maintained, but the emissions rate is nonetheless being exceeded. This provision will allow a source that exceeds permitted emissions, despite installing and properly maintaining the required equipment, to remain in compliance until permit limits are revised to reflect the emission

reductions actually achieved by the required technology. The EPA believes that this is an appropriate use of credits, and suggests that the rule could be strengthened by specifying what steps will be taken by the State to limit the amount of time the source remains out of compliance with BACT or LAER.

c. Offsets and Netting: Michigan allows use of credits for offsets or netting at new or modified sources, with the following restrictions:

i. New sources which use ERCs for offsets must cover a minimum of 2.5 years of operation, and modified sources must cover the period of time from issuance of an NSR permit to the date of issuance or renewal of an operating permit.

ii. For renewal of an operating permit, the source must obtain ERCs covering 5 years, or the term of the operating permit.

iii. The NSR permit must contain an enforceable commitment that the source may not receive an operating permit or operating permit renewal unless the operating permit contains an enforceable condition requiring the source to obtain offsets for 5 years or the period of time for which the permit is issued.

iv. ERCs used as offsets or for netting must be generated in the ''nonattainment area where the new or modified source is located or an adjacent nonattainment area of equal or higher classification or other area that contributes to the exceedance of a national ambient air quality standard in the nonattainment area where the new or modified source is located.'' Also, use must be in accordance with Clean Air Act Section 182 and Michigan rule R 336.1220 (the State's ''major offset rule'').

Section 182 of the Clean Air Act requires that offsets obtained from a different nonattainment area must be both from the same or higher classification and must contribute to a NAAQS exceedance in the relevant nonattainment area. This contraction in the rules appears to be an oversight; Rule 1211(3)(a) must be modified to reflect the language of Section 182 of the Clean Air Act.

Michigan's rule would allow ERCs to be banked for the purpose of netting. As stated in the technical support to the SIP, ''the reductions are still required to be made at the same stationary source and must be contemporaneous and of sufficient quantity to qualify under NSR regulations.'' Under the current definition of netting (40 CFR 52.21), emissions increases and decreases considered for the purpose of netting must be ''contemporaneous,'' defined as occurring within a period beginning 5 years before the date that construction is expected to commence on the proposed modification and ending when the increase from the modification occurs. Since ERCs expire 5 years after being generated under the Michigan rule, the contemporaneous requirement would not be violated under Michigan's rule.

For both offsets and netting, the technical support to the trading rule SIP submission indicates that MDEQ's intention is to allow ERCs to be used only in a manner consistent with New Source Review requirements. This intention must be stated explicitly as an enforceable requirement of the rules.

3. NESHAP and NSPS Requirements

Michigan's rule appropriately prohibits the use of credits to comply with National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standard (NSPS) emission limitations or work practice standards.

4. Certain Mobile Source Standards

Michigan's rule appropriately prohibits the use of credits to comply with ''Federally mandated mobile source requirements.''

5. Title IV Acid Rain Requirements

Michigan's rule appropriately prohibits Title IV sources that participate in the Title IV acid rain cap-and-trade program from using SO_2 and NO_X credits generated under Michigan's trading rule to fulfill Title IV requirements.

H. ERC Use Requirements

1. Ownership of Credits Prior to Use

In open market trading programs, it is vital that sources that use credits be required to own the credits prior to use. This requirement ensures that sources will not be able to use trading to avoid the need to maintain a compliance margin by simply using credits to ''true up'' after having exceeded their emission limits. Clearly, it is the intent of the Michigan program to require ownership of credits prior to use—Rule 1208(7) requires that emission reductions be generated prior to being used or traded; Rule 1214(1) requires a user source to submit a Notice of Use to MDEQ (which includes a copy of the Notice of Generation for the credits being used); the price paid for credits must be in the Notice of Use or submitted separately to the State within seven business days of the use or trade; and Rule 1216(1) places liability upon the source for assuring compliance with all applicable requirements. However, the rules do not contain a straightforward requirement that credits must be owned before use, nor do they specify that failure to hold sufficient credits is a violation. These deficiencies must be corrected in the rules.

2. Use Baseline

A trading program must specify the baseline for users of emissions reduction credits, so that users know how to calculate the number of credits that will be needed for compliance. While Michigan's intention seems to be that the baseline will be established by allowable emissions—that is, the maximum level of emissions that would have occurred had the source met its compliance obligations without the use of emission reduction credits—the rules do not make this intention explicit. The rules must include a specific definition of the user source baseline.

3. Temporal Requirements

The Michigan rule appropriately prohibits use during the ozone season of NO_X and VOC ERCs generated outside of the ozone season. The rule allows ERCs generated during the ozone season to be used during the entire year. This provision is appropriate because it could encourage sources to shift emissions of ozone precursors from the ozone season to the winter months, creating environmental benefits.

4. Geographic Requirements

Emission trading involves shifting of emissions from one area to another. An emission trading program requires restrictions on the geographic scope of trading in order to ensure that localized air quality problems are not created. In particular, a trading program must ensure that emission reductions generated in areas of clean air are not used to allow emissions increases in areas of poor air quality. The nature of the geographic restrictions needed depends on the transport characteristics of the pollutant being traded. Pollutants that affect air quality long distances from the location of their emission can potentially be traded over a large area, while pollutants that affect air quality in a small area should not be traded beyond that area.

The Michigan rule includes some provisions to discourage the shifting of emissions from low pollution areas to areas with higher pollution. Under the Michigan rule, trading can occur within the same or a contiguous attainment area, between contiguous nonattainment areas of the same classification, or from a nonattainment area to an attainment

area anywhere else in the state, on a 1:1 ratio. ERCs used in a nonattainment area but generated in an attainment area or a nonattainment area of lower classification elsewhere in the state must be discounted by the ratios specified for the higher classification area in section 182 of the Act, in addition to the 10 percent discount for the environment. For instance, there would be a total 25 percent discount for a trade from an attainment area to a moderate nonattainment area (10 percent for the environment, 15 percent for the geographic shift). The rule does not specifically address the issue of trades between noncontiguous areas of the same classification.

Despite these provisions, the current geographic restrictions in Michigan's SIP are not sufficient to ensure that ERCs will be used in a manner that would maintain or improve air quality. EPA is concerned that sources in attainment areas could generate large numbers of ERCs by reducing emissions from an uncontrolled baseline. These ERCs could then be used to allow for emissions increases or to forego reductions in nonattainment and maintenance areas where emission controls are required and where reductions are necessary to achieve attainment. Moreover, it is unlikely that these trades would be balanced by an equal volume of trades in the opposite direction, since sources in attainment areas are subject to fewer requirements and would have less need of ERCs than sources located in nonattainment areas. For example, Michigan has some VOC RACT rules which apply only in nonattainment and maintenance areas, or that have lower applicability thresholds in those areas. Sources subject to these requirements could potentially use VOC credits that were generated outside the area from an uncontrolled baseline. This would result in a net decrease in air quality, since credits would be shifted into the more highly polluted area where the requirements applied. For these reasons, trading between attainment and nonattainment areas may not balance out, despite the required discounts for attainment area ERCs used in nonattainment areas.

Trading between nonattainment or maintenance areas and attainment areas could be acceptable in cases where the State provides a demonstration that pollution emitted in an attainment area affects a nonattainment or maintenance area. EPA feels that it would be difficult to demonstrate that emissions from the entire State affect air quality in Michigan's nonattainment areas for ozone or for the other criteria pollutants. However, EPA agrees with Michigan that a more regional approach to protecting air quality is needed.

a. Geographic Restrictions on Trading of Ozone Precursors: EPA's proposal for an interim implementation policy (IIP) for a potential new ozone standard (61 FR 65752–65762, December 13, 1996) includes an example of a possible regional approach to trading of VOCs and NO_X. This proposal suggests that nonattainment areas be allowed to take credit for reductions occurring within an expanded area extending 100 km from the nonattainment area boundary for VOCs and 200 km from the nonattainment area boundary for NO_X. While the IIP proposal would allow this expanded geographic area to be used for the purpose of meeting post-1996 and post-1999 rate-of-progress requirements, EPA believes that the same geographic limits could be adopted to fit the trading allowed in the Michigan rule. Revising the Michigan rule to allow trading and averaging of VOC and NO_X emissions within these geographic limits would enable sources to escape the current restrictions caused by attainment and nonattainment area designations, while also ensuring that the air quality in the area where trading occurs will be, on average, improved. Making this revision would eliminate EPA's transport-related approvability issues for NO_X and VOCs. These geographic limits, of course, need apply only to sources which use trading to meet Federal, or SIP, requirements.

b. Restrictions on Trading of Criteria Pollutants other than Ozone: Because of the highly localized impacts that can be created by emissions of the criteria pollutants other than ozone, all trades and averaging involving above *de minimus* levels of these pollutants must be evaluated for their localized impacts. For these pollutants, trading between an attainment area and a nonattainment or maintenance area is unacceptable, and trading above *de minimus* levels even within areas is acceptable only if an evaluation indicates that the trade will not cause an air quality problem.

Trading of emissions of sulfur dioxide, nitrogen dioxide, particulate matter, carbon monoxide and lead, as allowed under Michigan's program, creates concerns that do not arise in the trading of ozone precursor emissions. Trading of criteria pollutants other than ozone raises questions about whether the trading program would be adequately protective of the National Ambient Air Quality Standards (NAAQS), given that stationary source emissions of these pollutants can create highly localized air quality problems (CO and fine particulates can be either an area-wide or a localized problem). Moreover, a shift in emissions of these pollutants from, for instance, a tall stack to a short stack can make a major difference in air quality. Therefore, for criteria pollutants other than ozone, special protections are needed to ensure that use of ERCs does not lead to NAAQS violations. Whereas attainment and maintenance plans for ozone focus on reducing the region-wide emissions of ozone precursors, for the other criteria pollutants, the specific location of the emissions is of vital importance. Rule 1204(1) provides some protection against violations of the NAAQS or of attainment or maintenance plans, stating that:

> emission averaging and the use of emission reduction credits in an attainment area shall not cause a violation of a national ambient air quality standard, allotted prevention of significant deterioration increments, or an applicable attainment area maintenance plan. Emission averaging and the use of emission reduction credits in a nonattainment area shall result in emission reductions consistent with the requirements for reasonable further progress for the nonattainment area and the attainment demonstration and maintenance plan specified in the state implementation plan.

Michigan has developed procedures to ensure proper State review of ERC uses and emission averaging of criteria pollutants other than ozone that could cause concerns, and to ensure that modeling is done to predict the air quality impact of potentially problematic ERC uses and averaging. MDEQ's procedures for review of notices of use and emission averaging, containing adequate modeling requirements, must be submitted as part of the SIP to provide added protection against potential adverse environmental impacts created by trading of criteria pollutants other than ozone.

5. Intersector Trading

Michigan's rule specifies that ERC trading between mobile and stationary sources is allowed. This provision is appropriate, since it increases the number of options for trading.

6. Interpollutant Trading

The Michigan rule appropriately prohibits the use of ERCs for one criteria pollutant or ozone precursor to allow for increases in a different criteria pollutant or ozone precursor, ''except for interstate trading where the use is consistent with a regional ozone control strategy and the state implementation plan.''

I. Notice and Recordkeeping Requirements

The Michigan rule requires that notices of generation or emission

averaging and notices of use and their supporting documentation accompany ERC trades, and establishes responsibility with the ERC users and generators, or emission averagers, to store and maintain this information. Michigan requires that copies of the notices and their supporting documentation be stored on site no less than five calendar years after the date of expiration of the emission averaging plan or after the date the ERC is used, expired, or retired. These recordkeeping requirements are appropriate.

1. Notice of ERC Generation

The Michigan rule requires sources to file a Notice of Intent to Generate credits. For emission reductions generated between January 1, 1991, and the effective date of the rule, sources have 1 year from the effective date of the rule to file such Notices. For post-enactment reductions, there is no specified filing deadline, since credit life is limited to 5 years after the year of generation. The rule appropriately requires that the Notice of Generation be included in the Notice of Use.

The EPA suggests that Michigan require notification of the relevant Metropolitan Planning Organization in the event of mobile source generation activities, and that the Notice of Intent to Generate include a certification that the protocol used to quantify reductions was acceptable.

MDEQ staff have developed a system for tracking ERCs by serial number. While the system assigns serial numbers for each batch of ERCs generated, not for each ton (as EPA would prefer), the Michigan system seems adequate to enable accurate tracking in the registry of each credit throughout its life.

2. Notice of Intent to Use ERCs

Michigan requires that sources submit to the State a Notice of Intent to Use. The State then has 30 days to make a completeness determination of the notice. The notice requires a description of the ''source, process, or process equipment'' where the credits will be applied. The EPA recommends that, to simplify compliance determination, the source, process, or process equipment be identified by permit or identification number.

The party using credits is required to include the price paid for the credits, either within the notice or by separately notifying the State within seven business days of the use or trade. The Michigan rule does not require the user to notify the State when credits are used. However, the Notice of Intent to Use is required to include the effective dates of use of the emission credits (1214(1)(h)). Any methods used and operational changes made to accommodate the use of credits become legally enforceable upon the effective date of the completeness notice issued by the State. Furthermore, the rule requires the State to create an emission trading registry for ''recording and tracking emission averaging and the use and trading of emission reduction credits.'' The EPA feels that these provisions are adequate.

Michigan also requires that notices of intent to use include identification of ''the methods and procedures used to quantify emissions and to determine compliance with all applicable requirements'' and ''calculations demonstrating compliance through the use of emission reduction credits.''

3. Public Availability of Information

EPA policy is that any information required to determine emissions and to judge the quality of an ERC must be publicly available and therefore not designated confidential. Sources that wish to use ERCs must have access to this information, as must the general public. Michigan Rule 1213(5) allows portions of information in notices of ERC use or generation to be determined to be confidential under sections 11(2) and (3) of Act No. 451 of the Michigan Public Acts of 1994. However, Act No. 451 specifies in part that ''data on the quantity, composition, or quality of emissions from any source'' may not be held confidential, and that ''data on the amount and nature of air contaminants emitted from a source shall be available to the public.'' EPA feels that these provisions in Act No. 451, as cited in the trading rule, adequately guarantee public access to the information needed to determine emissions from sources participating in trading and to evaluate the quality of ERCs.

MDEQ must also ensure access to information collected by sources as part of an environmental self-audit that demonstrated erroneous or willful generation or use of invalid credits. As discussed in the following section, these sources may be eligible for a 30-day reconciliation period under certain circumstances; the state must be able to review this information to verify that such an opportunity is appropriate.

J. Enforcement and Compliance Provisions

1. Compliance Certification

If either a generator or user of credits under the Michigan rule self-reports to the State errors in calculations, methods, etc. resulting in the generation or use of invalid credits, a reconciliation period of up to 30 days is generally permitted without penalty for the party at fault to purchase valid credits or to revise its planning to compensate for its errors. This reconciliation period is available to those who provide a notice within 30 days of discovery that includes an explanation that the circumstances causing the credits to be invalid have not occurred before, and a description of corrective steps that will be taken to ensure that the error does not occur again.

The EPA would prefer that no reconciliation period be granted, or that some lesser penalty be identified for those sources that self-report mistakes than those who do not; allowing a reconciliation period without any penalty lessens the incentive for generators and users of credits to ensure that credits are valid. However, this provision of Michigan's rule is acceptable because it limits the relief provided by the reconciliation period; it is available only to those sources self-reporting errors. In addition, granting of a reconciliation period does not bring a source into compliance with the underlying requirement being violated, leaving them subject to enforcement.

2. Violations and Penalties

Generators of credits which are discovered by the State to be invalid must purchase three times the amount of the invalid credits, which are then donated to the environment. The EPA supports the use of this type of penalty and the donation of the credits to the environment, and also recommends that provisions which address the circumstance in which a user knowingly uses invalid credits be added to the rule.

Donation of credits to the environment under this subrule does not exclude a party from other penalties: ''A donation of emission reduction credits under this subrule shall not be considered to be a civil or criminal penalty * * * a person may also be subject to civil and criminal enforcement actions, fines, and imprisonment as provided under the act.'' (1216(3))

3. Assignment of Regulatory Liability

In an open market program where credits are certified, the user can rely on the State's evaluation of credit quality (which is in turn based on an evaluation of the accuracy and validity of quantification methods). Without this certification, it falls upon the user to evaluate the quality of quantification techniques when determining how many credits are needed for compliance purposes, and upon the market to create

financial value for credits based on their quality.

The Michigan rule requires that a credit be registered before use, but not certified; the State performs only a completeness determination of the Notice of Generation. The EPA strongly supports Rule 1216(1), which specifies that both the generator and user are held responsible for the generation of invalid credits. This feature of Michigan's rule provides an added incentive to the user to conduct the checks of credit validity that are not performed due to the absence of a credit certification process in the rule.

This open market program design places considerable importance on the quality of quantification protocols, so that accurate determinations of credit value can be made by potential users. For this reason, the trading rules should include the provisions discussed in Section II (F) of this action requiring that Michigan follow EPA-approved protocols and protocol development criteria.

K. Effect of Trading on Hazardous Air Pollutant Emissions

The Michigan rule 1204(3) prohibits any use of ERCs or averaging that would result in an increase in the maximum hourly emission rate of a toxic air contaminant from an existing stationary source or area source, unless it can be demonstrated to the MDEQ that the increased rate will not cause or exacerbate the exceedance of a toxic air contaminant screening level based on the methodology in State rule R336.1230. This provision places the burden on sources to determine whether increased emissions of toxic air contaminants will result from emission averaging or ERC use. In addition, the Michigan rule allows the MDEQ to prohibit any use of credits or averaging that would result in an increase in any of a list of 14 toxic, persistent pollutants, if it determines that the increase would be ''inconsistent with the act or protection of public health, safety or welfare.'' [2] It would be up to the MDEQ to determine when such an inconsistency arose.

The Michigan approach is considerably different from the one favored by EPA. The EPA's favored approach would not restrict increases in maximum hourly emissions of toxic pollutants, or restrict total mass increases of toxic, persistent pollutants, but rather would require sources that participate in open market trading to disclose all estimated or measured negative effects of credit trading on emissions of the hazardous air pollutants (HAPs) listed in section 112 of the Act.

Many VOCs are listed as hazardous air pollutants (HAPs) in section 112 of the Act, and emissions of particulate matter may include hazardous air pollutants. Emissions of these toxic pollutants are often reduced incidentally by compliance with VOC or particulate matter limitations. Accordingly, ERC generation could have the effect of lowering toxic emissions from a facility. However, trading could also result in higher levels of toxic emissions; if a facility that emits HAPs uses ERCs to satisfy a VOC or particulate matter requirement, the facility's emissions of HAPs could be higher than if the facility had installed controls. This would be an example of a foregone decrease in toxics emissions. Whether or not emissions of toxics are increased or decreased at a given source due to trading or averaging, Federal and State air toxics standards must continue to be achieved.

EPA believes that citizens have the right to know if emissions trading may adversely affect the emissions of HAPs from a nearby facility, and therefore have a possible impact on public health. Disclosure of impacts on toxics emissions would also assist the State in determining if credit generation or use would trigger any air toxics program requirements at a particular facility and would allow identification and potential resolution of environmental justice issues as required in Executive Order 12898. Therefore, EPA requires that a State that implements an open market trading program must, at a minimum, require facilities to disclose the effect of open market emissions trading on HAP emissions. Disclosure must, at a minimum, follow the Toxics Release Inventory reporting requirements. States must also examine the effects of the open market trading program on HAP emissions as part of the periodic program performance audit.

Michigan's Rule 1217(1)(c) requires that audits address ''whether the program has caused any localized adverse effects to the public health, safety, or welfare or to the environment.'' We interpret this provision to require examination of the effects of trading on HAPs, as well as on air quality impacts related to the criteria pollutants. However, Michigan's program lacks a requirement that the effects of trades also be disclosed to the public at the time of registration of use of credits. Michigan must include this requirement in its SIP.

L. Interstate Trading

In order to accommodate a more regional approach to air quality management, it must be recognized that traditional boundaries, such as state lines, do not necessarily accurately reflect the geographic areas that are most relevant for emission trading purposes. For this reason, EPA agrees with Michigan's intent to allow interstate emissions trading.

However, allowing the exchange of credits between two states that may have considerably different air quality management programs raises a variety of issues that must be addressed. Safeguards must prevent multiple uses of the same ERC unit, ensure enforceability of credits generated out of state, and require that States properly account for emission shifts in attainment planning and Reasonable Further Progress milestone demonstrations. Michigan must provide a federally enforceable commitment that it will not allow the use of credits from other states without first entering into an adequate Memorandum of Understanding (MOU) with that State. Michigan may either submit an MOU that addresses these concerns to EPA for approval prior to undertaking trades with another State, or include in its SIP revision a list of items that the State commits to address in each future interstate MOU. With the latter option, a future MOU need not undergo EPA review and approval, but the SIP must ensure that any subsequent MOU addresses the consistency between key trading rule elements in each State, including:

1. The ERC identification system;
2. Sharing of required Notices and a compatible credit tracking system;
3. Geographic limitations (for instance, a VOC trade between Michigan and Colorado should not be allowed);
4. Credit lifetimes and expiration dates;
5. Record retention requirements;
6. The list of acceptable credit generation and use activities;
7. Consistent treatment of credit generation and use protocols;
8. Credit generation base case definitions; and
9. Ozone season definition and any other temporal requirements.

Additionally, an MOU must contain a clear statement that each State will enforce emission limitations under its jurisdiction and a procedure for incorporating emission shifts caused by trading in each State's attainment and

[2] The pollutants are mercury, alkylated lead compounds, cadmium, arsenic, chromium, polychlorinated biphenyls, chlordane, octachlorostyrene, toxaphene, hexachlorobenzene, benzo(a)pyrene, DDT and its metabolites, 2,3,7,8-tetrachlorodibenzo-p-dioxin, and 2,3,7,8-tetrachlorodibenzofuran.

maintenance plans and demonstrations, RFP plans and demonstrations. The MOU must make a determination on which State's laws determine whether a credit is valid. EPA agrees with MDEQ that any out-of-State credit must comply with the user State's requirements.

M. Protection of Class I Areas

The EPA has a policy of providing special protection for Class I areas (pristine environments such as international parks and large national parks and wilderness areas), as required under sections 160 through 169 of the Clean Air Act. This policy includes keeping Federal Land Managers informed of activities that could affect air quality in Class I areas. In accordance with this policy, to receive EPA approval, emissions trading programs must include provisions requiring that the relevant Federal Land Manager be notified 30 days before any ERC use activity occurs in, or within 100 km of, a Class I area. Michigan's rule contains no such notification provisions. This deficiency could be corrected by rule revision, or by procedures submitted as part of the SIP which require MDEQ staff to forward notices of use or notices of emissions averaging which involve increases within 100 km of a Class I area to the Federal Land Manager.

N. Federal Operating Permits

In order to allow for open market emission trading, Michigan must revise its federally required operating permit program to cite the trading rule in order to recognize ERC use as a compliance alternative for permitted sources that are covered by the emissions trading rule. Prior to ERC use, every permitted source that intends to use ERCs or emissions averaging must possess a permit containing language that references the emissions trading and averaging rules and allows ERCs to be used for compliance demonstrations.

O. Open Market Program Audits

Michigan requires an evaluation of the emission trading program and a public report to be made at least every 3 years, or more frequently if deemed necessary by the State. The EPA supports the provisions that specify that an audit evaluate:

—Whether the program is consistent with achievement and maintenance of the NAAQS and has resulted in emission reductions consistent with reasonable further progress toward attainment;

—Whether monitoring, recordkeeping, reporting, and enforcement have resulted in a sufficiently high level of compliance;

—Whether the program has caused any localized adverse effects to public health, safety, or welfare or the environment;

—Whether the program is achieving reductions across a spectrum of sources, including area and mobile sources; and

—Whether individual source audit provisions have resulted in a sufficient number of audits.

P. Contingency Measures

Michigan's rule states that if, after the triennial program evaluation, MDEQ determines that program revisions are necessary, it will revise the program and submit a SIP revision to EPA within 6 months. This provision is appropriate. EPA considers that program revisions would be warranted if ERC generation has been greater than ERC use, resulting in emissions spiking on days of poor air quality or failure to meet area wide RACT-level or other required emission reductions; if trading or averaging has led to an increase in exposure to hazardous air pollutants or criteria air pollutants, or if Class I areas have been adversely affected by the generation or use of ERCs.

Q. Early NO_X Reductions

For EPA to approve an open market trading rule, it needs to be convinced that ERC generation is likely to keep pace with ERC use, so that there will not be significant emissions ''spikes'' created by the use of a large number of ERCs in a short period of time. For VOCs, EPA has determined that the risk that there will be such spikes is sufficiently small that this issue can be dealt with through periodic audits and contingency measures. However, for other pollutants, particularly NO_X, EPA has greater concerns. Under open market trading, large NO_X sources which are not currently subject to any emissions limits would be able to bank large volumes of early reductions generated through early compliance with forthcoming Title IV Acid Rain program requirements. When used later, these large volumes of ERCs could create spikes large enough to compromise attainment.

Michigan's program protects against this problem within the State. Rule 1212(2) limits the life of credits ''generated by emission reductions which are necessary to comply with a proposed applicable requirement and which occur after the date the applicable requirement is proposed but before final compliance dates'' to five calendar years or to one calendar year after the effective date of final compliance, whichever comes first. Therefore all NO_X credits generated through early compliance with Title IV requirements will expire on January 1, 2002, or 1 year after the applicable requirements become effective. As a result of the limited life of these credits, unless a market demand for NO_X credits within Michigan is created prior to January 1, 2002, most or all of the credits generated in this fashion will result in early reductions without risk of being used within Michigan.

Given this protection, EPA's remaining concern is that the NO_X ERCs generated through early compliance with Title IV requirements not be used in other States after January 1, 2002. To allay this concern, MDEQ must outline the existing procedures in the SIP, or add such procedures, that insure that these credits expire in accordance with Michigan rules and cannot be used in other States.

R. Property Rights

Michigan's emissions trading program does not contain a statement that emission reduction credits do not constitute a property right. All tradeable emissions reduction credits or allowances under the Act are limited authorizations to emit pollutants, and do not constitute a property right. Section 403(f) of the Clean Air Act, which deals with sulfur dioxide allowances under the Acid Rain program, states:

> An allowance allocated * * * is a limited authorization to emit sulfur dioxide * * * Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

Congress included this requirement to ensure that allowance holders understood that they were barred from claiming a governmental taking under the 5th Amendment of the U.S. Constitution. Property status could produce undesired and perverse results, such as requiring a government agency to compensate the owner of a pollution source when its emissions are limited. The absence of property status authorizes the participating air pollution control agency to limit or terminate credit use in extreme circumstances. The same logic applies to emission reduction credits.

States should actually terminate credits only when other options have failed to provide for meeting the State's underlying Act obligations. Although EPA would not expect this to occur, and would expect that the program will

achieve real and cost-effective emissions reductions without having to resort to credit limitation, this contingency measure must be available to provide confidence that States will make continued progress toward their air pollution control goals.

In order to ensure that sources cannot claim that ownership of an ERC issued under Michigan's program grants them a property right, Michigan must include in its SIP a statement that ERCs do not constitute a property right, either directly in the rule or in the form of a letter from the Attorney General.

III. Proposed Action

The EPA is proposing to approve this revision to the Michigan SIP for the reasons outlined above. EPA will not take action toward final approval of this SIP revision until the deficiencies discussed in this document are corrected. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's proposed approval of the Michigan's request under section 110 of the Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this approval. Federal approval of the state submittal does not affect its state-enforceability. Moreover, EPA's approval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this approval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements or impose any new Federal requirements.

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

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

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Sulfur dioxide, Particulate Matter, Lead, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 4, 1997.

David A. Ullrich,

Acting Regional Administrator.

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