Authority: 42 U.S.C 7401–7671q.

Subpart X—Michigan

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

§ 52.1173 Control strategy: Particulates.

* * * * *

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

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

§ 52.1174 Control strategy: Ozone.

* * * * *

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

* * * * *

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

§ 52.1185 Control strategy: Carbon Monoxide.

* * * * *

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

* * * * *

[FR Doc. 96–32057 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI40–02–7255; FRL–5662–8]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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

II. Evaluation of the State's Submittal

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

1996, the EPA simultaneously published a direct final rule and a proposed rule in which EPA published its decision to approve the Michigan SIP revision. These rules were subject to a 30 day public comment period, during which the EPA received one adverse comment. For this reason, the EPA withdrew the direct final rule on April 12, 1996.

Transportation conformity is required for all areas which are designated nonattainment or maintenance for any transportation related criteria pollutants. At the time of the proposal, the State of Michigan had 25 areas designated ozone nonattainment, and one maintenance area. On February 14, 1996, EPA published a final rule (61 FR 5707) correcting the designation of 20 of the areas from nonattainment to attainment/unclassifiable for ozone, effective March 15, 1996. Pursuant to that final rule, the following areas are no longer required to assess the conformity of transportation plans, programs, and projects: The nonurbanized counties of Barry, Branch, Cass, Gratiot, Hillsdale, Huron, Ionia, Lapeer, Lenawee, Montcalm, Sanilac, Shiawassee, St. Joseph, Tuscola, and Van Buren; the urbanized areas of Battle Creek Metropolitan Statistical Area (MSA) (Calhoun County), Benton Harbor MSA (Berrien County), Jackson MSA (Jackson County), Kalamazoo MSA (Kalamazoo County), and Lansing-East Lansing MSA (Clinton, Eaton, and Ingham Counties). The following areas remain designated nonattainment or maintenance for ozone and are thus required to perform conformity determinations: The urbanized areas of Detroit-Ann Arbor Consolidated MSA (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties), Flint MSA (Genesee County), Grand Rapids MSA (Kent and Ottawa Counties), Muskegon MSA (Muskegon County), Saginaw-Bay City-Midland MSA (Bay, Midland, and Saginaw Counties), and the nonurbanized Allegan County. In addition, portions of three counties (Wayne, Oakland, and Macomb) remain designated carbon monoxide nonattainment.

III. Public Comments

One set of public comments was submitted jointly by the Citizens for Clean Air in the Lake Michigan Basin, American Lung Association of Michigan, and the East Michigan Environmental Action Council.

Comment: The commentor contends that Michigan inappropriately relies on the Michigan Environmental Protection Act (MEPA) for enforcement of its transportation conformity SIP revision. Specifically, the commentor contends that MEPA is not an adequate enforcement mechanism because, as interpreted by Michigan case law, it requires a citizen to demonstrate that a transportation project will have a statewide impact before the citizen can obtain injunctive relief.

Response: Section 110(a)(2) of the Act requires that all SIP measures be enforceable and that the states have adequate authority under local law to implement them. EPA therefore will not approve state transportation conformity provisions unless the state can demonstrate that it has adequate authority to compel compliance with such provisions. MDEQ, in consultation with the Michigan Attorney General, determined that Sections 336.115 and 336.26d of the Michigan Complied Laws (MCL), MSA § 14.58(5) and 14.58(16d)(1965 Mich.Pub.Acts 348), provide the State with ample authority to enforce the transportation conformity SIP provisions. Section 336.15 authorizes MDEQ to institute a civil action to compel compliance with those provisions and to take other actions necessary to enforce them, and Section 336.26d provides for the assessment of penalties and authorizes the attorney general to seek both penalties and injunctive relief for violations. ''Additional'' enforcement authority is found in the MEPA provisions upon which the commentors have focused. Those provisions authorize the attorney general or any person or legal entity to bring a civil action for declaratory and equitable relief for the ''protection of the air from pollution, impairment or destruction.'' Case law cited by the commentors recognizes that not all threats to the environment justify judicial intervention pursuant to MEPA. Rather, a determination of whether an environmental risk rises to the level of ''impairment or destruction'' depends on a variety of factors, including the magnitude of the harm, the characteristic of resources involved, the nature of defendant's actions, and the type of property involved. *Kimberly Hills Neighborhood Association* v. *Dion,* 114 Mich.App. 495, 320 N.W.2d 668 (1982). However, the fact that case law interpreting MEPA precludes a citizen from obtaining injunctive relief absent a showing that the impact on the environment will be significant does not negate the State's authority to enforce the transportation conformity SIP provisions pursuant to Sections 336.115 and 336.26d of the Michigan Complied Laws. Michigan's transportation conformity SIP provisions remain ''enforceable'' by the State within the meaning of Section 110(a)(2).

Comment: The commentor believes that the MOA between the affected agencies will not ensure compliance with the transportation conformity requirements.

Response: The MOA constitutes a binding agreement among the affected agencies to comply with the transportation conformity SIP and contains an outline which defines each agency's role and responsibilities in the transportation conformity process. Parties to the MOA agree to implement the transportation conformity process in compliance with the Act and the transportation conformity rule. Doubts raised by the commentors as to whether the parties will live up to their agreements do not warrant a finding that the State will not be able to enforce compliance with the transportation conformity SIP; nor do they warrant disapproval this SIP revision.

Comment: The commentor questioned why the direct final rule indicated that the following areas are required to assess conformity: Barry, Branch, Cass, Gratiot, Hillsdale, Huron, Ionia, Lapeer, Lenawee, Battle Creek MSA (Calhoun County), Benton Harbor MSA (Berrien County), Jackson MSA (Jackson County), Kalamazoo MSA (Kalamazoo County), Lansing-East Lansing MSA (Clinton, Eaton, and Ingham Counties). The commentor correctly states that transportation conformity is only required for nonattainment and maintenance areas and that the classifications of these counties were technically corrected from nonattainment to attainment for ozone, as published in 61 FR 5707 (February 14, 1996). Noting this discrepancy, the commentor believes that the Michigan transportation SIP was not prepared with the necessary care and attention to detail.

Response: Transportation conformity is required for all areas which are designated nonattainment or maintenance for any transportation related criteria pollutants. The State of Michigan submitted the transportation conformity SIP on November 24, 1994. At that time, all of the above listed areas were designated nonattainment for ozone. The EPA rulemakings on the transportation conformity SIP revision and on the technical correction proceeded simultaneously. Until the effective date of the technical correction, these areas were designated nonattainment for ozone and were required to assess conformity of transportation activities. The correction, which did not occur until February 14, 1996 and which did not become

effective until March 15, 1996, is reflected in this notice.

IV. EPA Action

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

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: November 21, 1996.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401–7671q.

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (m) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(m) Approval—On November 24, 1994, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

* * * * *

3. Part 52 is amended by adding § 52.1185 to read as follows:

§ 52.1185 Control strategy: Carbon Monoxide.

(a) Approval—On November 24, 1994, the Michigan Department of Natural Resources submitted a revision to the carbon monoxide State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

* * * * *

[FR Doc. 96–32058 Filed 12–17–96; 8:45 am]

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