

§ 52.1031 EPA-approved Maine regulations.

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TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
100	Definitions Regulation.	* * 6/22/94	* 2/14/96	* * [Insert FR citation from published date].	* (c)(37)	* Addition of 1990 Part D NSR and other CAAA requirements.
113	Growth Offset Regulation.	* * 6/22/94	* 2/14/96	* * [Insert FR citation from published date].	* (c)(37)	* Addition of 1990 Part D NSR requirements.
115	Emission License Regulation.	* * 6/22/94	* 2/14/96	* * [Insert FR citation from published date].	* (c)(37)	* Addition of 1990 Part D NSR and other CAAA requirements.
		* *	*	* *	*	*

§ 52.1026 [Amended]

4. § 52.1026 is amended by adding the words "as amended by the CAAA of 1990." to the last sentence.

[FR Doc. 96-3235 Filed 2-13-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MI40-01-6998a; FRL-5418-1]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: This notice approves a revision to the Michigan State Implementation Plan (SIP) to meet the requirements of the USEPA 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 in accordance with 40 CFR 51.396(b). This notice of 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 USEPA notice. This notice provides the rationale for this approval and other information.

DATES: This "direct final" is effective April 15, 1996, unless USEPA receives adverse or critical comments by March 15, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision, public comments and USEPA'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 SW., Washington, D.C. 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AT-18J), Air Toxics and Radiation 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 (CAA), 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 CAA. Conformity is defined as 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 CAA requires USEPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to applicable SIPs. The USEPA 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 USEPA 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 USEPA 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 CAA, the Michigan Department of Natural Resources (MDNR) submitted a SIP revision to the USEPA on November 24, 1994. The USEPA found this submittal was complete on April 13, 1995. In its submittal, the State included provisions required by the USEPA transportation conformity rule (40 CFR part 51, subpart T), Memorandum of Agreement (MOA) between the affected agencies, and Metropolitan Planning Organization (MPO) resolutions.

Transportation conformity is required for all areas which are designated nonattainment or maintenance for any transportation related criteria pollutants. The State of Michigan currently has 25 areas designated ozone nonattainment, and one ozone maintenance area. The areas for which transportation conformity determinations are required and which are included as part of Michigan's submittal include the following nonurbanized counties: Allegan, Barry, Branch, Cass, Gratiot, Hillsdale, Huron, Ionia, Lenawee, Lapeer, Montcalm, Saint Joseph, Sanilac, Shiawassee, Tuscola, Van Buren. Urbanized areas include: Battle Creek Metropolitan Statistical Area (MSA) (Calhoun County), Benton Harbor MSA (Berrien County), Detroit-Ann Arbor Consolidated MSA (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties which are ozone maintenance), Flint MSA (Genesee County), Grand Rapids MSA (Kent and Ottawa Counties), Jackson MSA (Jackson County), Kalamazoo MSA (Kalamazoo County), Lansing-East Lansing MSA (Clinton, Eaton, and Ingham Counties), Muskegon MSA (Muskegon County), and Saginaw-Bay City-Midland MSA (Bay, Midland, and Saginaw Counties). In addition to the ozone nonattainment and maintenance areas, portions of three counties (Wayne, Oakland, and Macomb) are designated carbon monoxide nonattainment.

The MDNR held a public hearing on its transportation conformity submittal on October 21, 1994. One comment was

received by MDNR and that comment was addressed in the submittal.

The consultation section of the USEPA transportation conformity rule (40 CFR 51.402) requires that the SIP revision include procedures for interagency consultation among the Federal, State, and local agencies and for resolution of conflicts in accordance with the criteria set forth in 40 CFR 51.402. Specifically, the SIP revision must include processes and procedures to be undertaken by Metropolitan Planning Organizations (MPO), State departments of transportation, and the United States Department of Transportation (USDOT) with State and local air quality agencies and USEPA before making a conformity determination, and by State and local air quality agencies and USEPA with MPOs, State departments of transportation, and USDOT in developing applicable SIPs.

In order to satisfy these requirements, the MDNR developed an ad hoc multi-agency committee, the Inter-agency Work Group (IAWG), which included representatives from the MDNR, Michigan Department of Transportation (MDOT), USDOT, and MPOs. The IAWG developed the final consultation rule by integrating the requirements of 40 CFR 51.402 and 23 CFR 450 with the local procedures and processes. Michigan's final consultation rule outlines the roles and responsibilities of each of the affected agencies for the process for determining conformity. The consultation rule further outline the procedures for conflict resolution in the transportation conformity process, for implementation of the public participation process, and for the submission of documentation relating to a conformity determination. The conformity SIP revision submitted by Michigan has adequately addressed all provisions of 40 CFR 51.402 and thus meets the USEPA SIP requirements.

Section 51.396 of the transportation conformity rule states that to be approvable by the USEPA, the SIP revision submitted to USEPA must address all requirements of the transportation conformity rule in a manner which gives them full legal effect. In particular, the revision must incorporate the provisions of the following sections of the rule in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedure more stringent than the requirements stated in these sections: 51.392, 51.394, 51.398, 51.400, 51.404, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438,

51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.460, and 51.462. The State of Michigan incorporated into the SIP revision submittal all of the above sections in verbatim form.

On August 7, 1995, USEPA finalized an amendment to section 51.448. It should be noted that additional sections of the conformity rule are scheduled to be amended. The USEPA can not approve sections into the SIP where inconsistencies exist between the submittal and the final rule. Following these rule changes, the State of Michigan will be required to update the SIP to address the rule changes.

The MDNR, after consulting with the Michigan Attorney General, correctly concluded that this SIP revision will be enforceable pursuant to Michigan statutory law. Section 336.15 of the Michigan Compiled Laws (MCL), MSA § 14.58(5)(1965 Mich. Pub. Acts 348), authorizes MDNR: to promulgate rules to establish standards for ambient air quality and for emissions (including SIPs); to institute a civil action to compel compliance with such rules; to cooperate with USEPA with respect to the control of air pollution; and to take other actions necessary to enforce such rules. Section 336.26d of MCL, MSA § 14.58(16d)(1965 Mich. Pub. Acts 348), provides for the assessment of penalties by MDNR for SIP violations and Section 336.26e of MCL, MSA § 14.58(16e)(1965 Mich. Pub. Acts 348), authorizes the attorney general to seek both penalties and injunctive relief for such violations.

Additional enforcement authority is found in MCL § 691.1202, MSA § 14.528(202)(1970 PA 127), which authorizes the attorney general, any political subdivision of the State, any instrumentality or agency of the State, 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. In determining whether a violation has occurred or is likely to occur, the court may adopt standards set forth in a SIP or may adopt another standard.

In addition, the MOA, which is the binding agreement among all of the affected agencies and which outlines each agency's roles and responsibilities in the transportation conformity process, contains an agreement by each agency to comply with the requirements of the federal transportation conformity rule. A total of 13 MOAs were included in the SIP revision: 12 MOAs between the local MPO, MDOT and MDNR for the 10 metropolitan areas, and one MOA between MDOT and MDNR for the remaining rural areas.

III. USEPA Action

The USEPA is approving the transportation conformity SIP revision for the State of Michigan. The USEPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR part 51 subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision. Because USEPA considers this action to be noncontroversial and routine, USEPA is approving it without prior proposal. This action will become effective on April 15, 1996. However, if we receive adverse comments by March 15, 1996, USEPA will publish a notice that withdraws this action.

IV. Miscellaneous

A. *Applicability to Future SIP Decisions*

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

B. *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 has exempted this regulatory action from E.O. 12866 review.

C. *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 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.

This approval does not create any new requirements. Therefore, I certify that this action 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 the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA 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 the private sector, of \$100 million or more. Under section 205, the USEPA 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 the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

D. *Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 1996. 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: January 23, 1996.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart X—Michigan

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

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

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. Section 52.1185 is added 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.

(b) (reserved).

[FR Doc. 96-3328 Filed 2-13-96; 8:45 am]

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40 CFR Part 52

[MA42-1-7174a; A-1-FRL-5329-5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Automotive Refinishing

AGENCY: Environmental Protection Agency (EPA).