

Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.6038A-2 is amended by revising paragraph (d) to read as follows:

#### § 1.6038A-2 Requirement of return.

\* \* \* \* \*

(d) [Reserved]. For further guidance, see § 1.6038A-2T(d).

\* \* \* \* \*

■ **Par. 3.** Section 1.6038A-2T is added to read as follows:

#### § 1.6038A-2T Requirement of return (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.6038A-2(a) through (c).

(d) *Time and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. A duplicate Form 5472 (including any attachments and schedules) shall be filed at the same time with the Internal Revenue Service Center, Philadelphia, PA 19255. A Form 5472 that is timely filed electronically satisfies the duplicate filing requirement.

(e) Through (g) [Reserved]. For further guidance, see § 1.6038A-2(e) through (g).

(h) *Effective date.* (1) This section applies for taxable years ending on or after January 1, 2003. For taxable years ending prior to January 1, 2003, see § 1.6038A-2(d) in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002).

(2) The applicability of this section expires on or before February 6, 2007.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 28, 2004.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[M183-03; FRL-7617-7]

#### Approval and Promulgation of State Implementation Plans; Michigan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to Michigan's definition of volatile organic compound (VOC). EPA's approval will revise Michigan's State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003. On September 2, 2003, the EPA proposed approval of this SIP revision and published a direct final approval as well. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on October 31, 2003.

**DATES:** This final rule is effective March 10, 2004.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-1767. E-Mail Address: [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** The **SUPPLEMENTARY INFORMATION** is organized in the following order:

- I. What Action Is EPA Taking Today?
- II. What Public Comments Were Received and What Is EPA's Response?
- III. Statutory and Executive Order Reviews.

#### I. What Action Is EPA Taking Today?

EPA is approving a revision to Michigan's definition of VOC. Michigan's revised definition of the term volatile organic compound is "any compound of carbon or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which have been determined by the United States Environmental Protection Agency

to have negligible photochemical reactivity: \* \* \*". The definition goes on to list the exempt compounds. When test methods measure exempt compounds, *i.e.* any of those contained in the list of excluded compounds, Michigan's definition allows for their exclusion providing that two specific criteria are met: (1) The exempt compounds must be accurately quantified and (2) MDNR must approve the exclusion.

EPA's approval of the new definition of VOC will revise Michigan's SIP for ozone.

#### II. What Public Comments Were Received and What Is EPA's Response?

We received one adverse comment on our proposed approval of Michigan's revised definition of VOC. Below, we have paraphrased the comment and responded to it.

*Comment:* I assume ozone and VOC standards are being made more lax and for that reason I oppose this proposal. Polluted air from Michigan is transported east and negatively impacts the health of citizens of the eastern United States. Michigan power plants must be required to clean the air.

*Response:* Ozone and VOC standards are not being made more lax. The definition of VOC currently in Michigan's SIP for ozone was approved in 1992. It met EPA's approval criteria, but had a more complicated structure, with divisions based on vapor pressure. In 1998, Michigan submitted a revised definition of VOC that we believe would have relaxed ozone standards. We proposed to disapprove this revision on June 10, 1999. After we published this proposed disapproval in the **Federal Register**, Michigan withdrew that version of the definition and revised it, modeling its definition after the federal definition at 40 CFR 51.100(s).

Since the 1992 approval, EPA has issued rules listing additional compounds as non-photochemically reactive. Michigan has included these compounds as exempt in the revised definition. This does not relax Michigan's definition of VOC because compounds which are not photochemically reactive, by their nature, do not contribute to the formation of ozone.

EPA recognizes that the transport of ozone and its precursors, particularly oxides of nitrogen (NO<sub>x</sub>), is a significant problem that must be addressed if all areas in the country are to attain the national ambient air quality standards for ozone. This is why EPA issued the Ozone Transport Rulemaking on October 27, 1998. In that rule, EPA limits NO<sub>x</sub> emissions by assigning states

NO<sub>x</sub> budgets. All states affected by the rule, including Michigan, will be meeting their NO<sub>x</sub> budgets by controlling emissions from power plants and other large industrial sources.

### III. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

#### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

#### *Regulatory Flexibility Act*

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

#### *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).

#### *Executive Order 13132: Federalism*

This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

#### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

#### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 9, 2004. 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, Incorporation by reference, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: January 23, 2004.

#### **Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart X—Michigan**

■ 2. Section 52.1170 is amended by adding paragraph (c)(119) to read as follows:

#### **§ 52.1170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(119) The Michigan Department of Environmental Quality submitted a revision to Michigan's State Implementation Plan for ozone on April 25, 2003. This submittal contained a revised definition of volatile organic compound.

(i) Incorporation by reference.

(A) R 336.1122 Definitions; V, effective March 13, 2003.

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