

provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts (74 FR 3822). The rules contain regulations implementing a statutory prohibited transaction exemption under ERISA Section 408(b)(14) and Section 408(g) and an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of Section 2550.408g-1 provided that the rule would apply to covered transactions occurring on or after March 23, 2009.

By memorandum dated January 20, 2009, Rahm Emanuel, Assistant to the President and Chief of Staff, directed Agency Heads to consider extending for 60 days the effective date of regulations that have been published in the **Federal Register** but not yet taken effect. The memorandum further advised that, where such regulations are extended, agencies should allow 30 days for interested persons to comment on issues of law and policy raised by the rules. In accordance with that memorandum, and taking into account the considerations listed in the Memorandum of January 21, 2009, from Peter R. Orszag, Director of the Office of Management and Budget, the Department published in the **Federal Register** on February 4, 2009, a document seeking comment on a proposed 60 day extension to the effective dates for these rules until May 22, 2009, and a proposed conforming amendment to the applicability date of Section 2550.408g-1 (74 FR 6007). The document also requested comment on issues of law and policy raised by the final rules. The Department indicated that upon completion of its review, it might decide to allow the rules to take effect, issue a further extension, withdraw the rules, or propose amendments. The comment period on the proposed extension ended on February 18, 2009. The comment period on issues of law and policy concerning the final rules ended on March 6, 2009. In response, the Department received 27 comment letters.<sup>1</sup> A number of these comments expressed the view that the final rules raise significant issues of law and policy. Among these, some expressed disagreement with the final rules' interpretation of the statutory exemption, and further questioned the adequacy of the class exemption's conditions in mitigating against the

potential for investment adviser self-dealing.

On March 20, 2009, the Department published in the **Federal Register** a document adopting the proposed 60 day delay of the effective and applicability date of the final rule published on January 21, 2009, for agency review of questions of law and policy raised by commenters (74 FR 11847). The Department believes that the complexity and significance of the issues involved justify delaying the effective and applicability dates of the final rule for an additional 180 days in order to afford the Department time for further review. Accordingly, the Department is adopting herein a 180 day delay of the effective and applicability date of the final rule published on January 21, 2009. With the adoption of this delay, the effective and applicability dates of the final rule will be November 18, 2009.

#### List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

■ For the reasons set forth above, the publication on January 21, 2009 (74 FR 3822), of the final rule amending 29 CFR Part 2550, is further amended as follows:

#### PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

**Authority:** 29 U.S.C. 1135; and Secretary of Labor's Order No. 6-2009, 74 FR 21524 (May 7, 2009). Secs. 2550.401b-1, 2550.408b-1, 2550.408b-19, 2550.408g-1, and 2550.408g-2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. Sec. 2550.401c-1 also issued under 29 U.S.C. 1101. Sections 2550.404c-1 and 2550.404c-5 also issued under 29 U.S.C. 1104. Sec. 2550.407c-3 also issued under 29 U.S.C. 1107. Sec. 2550.404a-2 also issued under 26 U.S.C. 401 note (sec. 657(c)(2), Pub. L. 107-16, 115 Stat. 38, 136 (2001)). Sec. 2550.408b-1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b-19 also issued under sec. 611(g)(3), Public Law 109-280, 120 Stat. 780, 975 (2006).

#### § 2550.408g-1 [Amended]

■ 2. Section 2550.408g-1 is amended by removing the date "May 22, 2009" and adding in its place "November 18, 2009" in paragraph (g).

Signed at Washington, DC, this 19th day of May 2009.

**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. E9-12065 Filed 5-21-09; 8:45 am]

BILLING CODE 4510-29-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-1134; FRL-8908-1]

### Approval and Promulgation of Air Quality Implementation Plans; Michigan; Consumer Products Rule

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Michigan Department of Environmental Quality (MDEQ) on October 26, 2007, to revise the Michigan State Implementation Plan (SIP). The State has submitted revisions to two rules in Part 6, "Emission Limitations and Prohibitions-Existing Sources of Volatile Organic Compound (VOC) Emissions." First, the State has revised R 336.1660 by adopting by reference, with some modifications, the Ozone Transport Commission's September 13, 2006, Model Rule (Model Rule). Second, the State has amended R 336.1661 by adopting by reference the Federal definition of "volatile organic compound."

**DATES:** This direct final rule will be effective July 21, 2009, unless EPA receives adverse comments by June 22, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1134, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax:* (312) 692-2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77

<sup>1</sup> These comments are available on the Department's Web site at: <http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html>.

West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2007-1134. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through

Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

**I. Background**

- A. When did the State submit the requested rule revisions to EPA?
- B. Did Michigan hold public hearings for each of these rule revisions?

**II. What are the revisions that the State is requesting for incorporation into the SIP?**

- A. Standards for Volatile Organic Compounds Emissions from Consumer Products
- B. Definitions for Consumer Products

**III. What action is EPA taking?**

**IV. Statutory and Executive Order Reviews**

**I. Background**

**A. When did the State submit the requested rule revisions to EPA?**

MDEQ submitted the requested rule revisions on October 26, 2007.

**B. Did Michigan hold public hearings for each of these rule revisions?**

MDEQ held a hearing on July 19, 2007, and did not receive any adverse comments.

**II. What are the revisions that the State is requesting for incorporation into the SIP?**

The State has requested that EPA approve revisions to R 336.1660, "Standards for VOC Emissions from Consumer Products," and R 336.1661, "Definitions for Consumer Products," into the Michigan SIP. The revisions are described in detail below.

**A. Standards for Volatile Organic Compounds Emissions from Consumer Products**

MDEQ has requested that EPA approve into the Michigan SIP the revision of Part 6, R 336.1660, into which the State has adopted by reference the provisions in the Ozone Transport Commission's amended "Model Rule for Consumer Products," dated September 13, 2006, with some modifications. The modifications are related to implementation dates that are

updated from the Model Rule and include several other minor changes.

The amended rules include: The addition of 23 product categories to the existing 83 categories in the table of standards in R 336.1660; the addition of sell-through of products; and the addition of requirements for contact adhesives, electronic cleaners, footwear, or leather care products, and general purpose degreasers. Michigan did not adopt the sections of the Model Rule that address variances, violations, and severability. It was not necessary for Michigan to adopt these three specific sections of the Model Rule, as there are Michigan-specific rules that already address these issues. Section 324.5535 of Michigan Act 451 addresses the State's variance requirements, Sections 324.5528 and 324.5531 of Michigan Act 451 address violations, and Section 324.9122 of Michigan Act 451 provides for severability of the State's rules.

**B. Definitions for Consumer Products**

MDEQ also has requested that EPA approve R 336.1661 into the Michigan SIP which adopts by reference the Federal definition of "volatile organic compound" from 40 CFR 51.100. R 336.1661 contains definitions used exclusively in R 336.1660.

**III. What action is EPA taking?**

We are approving revisions to the Michigan SIP in two portions of Part 6: (1) To revise R 336.1660, "Standards for VOC Emissions from Consumer Products," in which Michigan has adopted by reference the amended Ozone Transport Commission's Model Rule with some modifications, and (2) to revise R 336.1661, "Definitions for Consumer Products," to define "volatile organic compound." Michigan has adopted the amended Model Rule by reference with three exceptions.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective July 21, 2009 without further notice unless we receive relevant adverse written comments by June 22, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA

will not institute a second comment period, therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 21, 2009.

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 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 July 21, 2009. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 6, 2009.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

■ 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 *et seq.*

#### Subpart X—Michigan

■ 2. In § 52.1170, the table in paragraph (c) entitled "EPA-Approved Michigan Regulations" is amended by revising entries in Part 6 for "R 336.1660" and "R 336.1661" to read as follows:

#### § 52.1170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
<b>Part 6. Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions</b>				
R 336.1660 .....	Standards for Volatile Organic Compounds Emissions from Consumer Products.	October 3, 2007 .....	May 22, 2009 [Insert page number where the document begins].	*
R 336.1661 .....	Definitions for Consumer Products .....	October 3, 2007 .....	May 22, 2009 [Insert page number where the document begins].	*
*	*	*	*	*

\* \* \* \* \*

[FR Doc. E9-11915 Filed 5-21-09; 8:45 am]  
 BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 36**

[CC Docket No. 80-286; FCC 09-44]

**Jurisdictional Separations and Referral to the Federal-State Joint Board**

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission extends until June 30, 2010, the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations. Extending the freeze provides stability for, and avoids imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

**DATES:** Effective June 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Daniel Ball, Attorney Advisor, at 202-418-1577, Pricing Policy Division, Wireline Competition Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (R&O) in CC Docket No. 80-286, FCC 09-44, released on May 15, 2009. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445

12th Street, SW., Washington, DC 20554.

1. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The freeze of Part 36 category relationships and jurisdictional cost allocation factors was first implemented for five years on July 1, 2001, 66 FR 33202, June 21, 2001 (2001 Separations Freeze Order), then extended approximately three years on June 23, 2006, 71 FR 29843, May 24, 2006 (2006 Separations Freeze Extension Order). On March 27, 2009, the Commission released a notice of proposed rulemaking seeking comment on a further extension of the freeze until June 30, 2010. 74 FR 15236 (Apr. 3, 2009) (NPRM). The overwhelming majority of parties filing comments in response to the NPRM supported extension of the freeze. This R&O extends the current freeze until June 30, 2010. Extending the freeze provides stability for, and avoids imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission, working with the Federal-State Joint Board on Separations, considers issues relating to comprehensive separations reform.

2. The extended freeze will be implemented as described in the 2001 Separations Freeze Order. Specifically, price-cap carriers would use the same relationships between categories of investment and expenses within part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers would use the same frozen jurisdictional allocation factors, and would use the same frozen category relationships if they had opted previously to freeze those as well.

**I. Procedural Matters**

*A. Final Regulatory Flexibility Certification*

3. As required by the Regulatory Flexibility Act, the Commission certifies that these regulatory amendments will not have a significant impact on small business entities.

*B. Paperwork Reduction Act*

4. The R&O does not propose any new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, 44 U.S.C. 3506(c)(4).

*C. Congressional Review Act*

5. The Commission will send a copy of the R&O in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**II. Ordering Clauses**

6. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 214(e), 254, and 410, the R&O is adopted.

7. The report and order shall be effective June 22, 2009.

8. Pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), the issues set forth in the R&O are referred to the Federal-State Joint Board on Separations for preparation of a recommended decision.

9. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of