

[FR Doc. 2017-07028 Filed 4-7-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0705; FRL-9960-81-Region 5]

Air Plan Approval; Michigan; Transportation Conformity Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision for carbon monoxide (CO) and particulate matter (PM_{2.5}), submitted by the State of Michigan on October 3, 2016. The purpose of this revision is to establish transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

DATES: This direct final rule is effective June 9, 2017, unless EPA receives adverse comments by May 10, 2017. 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-2016-0705 at <http://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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

- I. What is the background for this action?
- II. What is EPA’s analysis of Michigan’s SIP revision?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Transportation conformity is required under section 176(c) of the Clean Air Act (Act) to ensure that transportation planning activities are consistent with (“conform to”) air quality planning goals in nonattainment/maintenance areas. The transportation conformity regulation is found in 40 CFR part 93 and provisions related to transportation conformity SIPs are found in 40 CFR 51.390. Transportation conformity applies to areas that are designated nonattainment or maintenance for the transportation related criteria pollutants listed in 40 CFR 93.102(b)(1). Michigan currently has maintenance areas for CO and PM_{2.5}.

EPA originally promulgated the Federal transportation conformity criteria and procedures (“Transportation Conformity Rule”) on November 24, 1993 (58 FR 62188). On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the Act transportation conformity provisions. SAFETEA-LU streamlined the requirements for conformity SIPs. Under SAFETEA-LU, States are required to address and tailor only three sections of the rules in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). 40 CFR 93.105 addresses consultation procedures for conformity. 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), addresses written commitments from project implementers of transportation control measures. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule.

II. What is EPA’s analysis of Michigan’s SIP revision?

A conformity SIP can be adopted as a state rule, as a memorandum of understanding, or a memorandum of agreement (MOA). The appropriate form of the state conformity procedures depends upon the requirements of local or State law, as long as the selected form complies with all requirements used by the Act for adoption, submission to EPA, and implementation of SIPs. EPA will accept state conformity SIPs in any form provided the state can demonstrate to EPA’s satisfaction that, as a matter of state law, the state has adequate authority to compel compliance with the requirements of the conformity SIP.

Michigan concluded that this SIP revision in the form of a MOA will be enforceable through a number of Michigan statutes. These statutes authorize state agencies to enter into legally binding cooperative contracts for the receipt or furnishing of services. In this case, these services relate to the transportation/air quality planning process in Michigan. Michigan collaborated with the Michigan Department of Transportation (MDOT), the EPA, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Southeast Michigan Council of Governments, to develop the Transportation Conformity MOA. This MOA was agreed upon and signed by all of the above consultation parties.

EPA has evaluated this SIP submission and finds that the state has addressed the requirements of the Federal transportation conformity rule as described in 40 CFR 51.390 and 40 CFR part 93, subpart A. The transportation conformity rule requires the states to develop their own processes and procedures for interagency consultation and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision includes processes and procedures to be followed by the Metropolitan Planning Organization (MPO), MDOT, the FHWA and the FTA, in consultation with the state and local air quality agencies and EPA before making transportation conformity determinations. Michigan’s transportation conformity SIP also included processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with the MPOs, the state Department of Transportation (DOT), and the U.S. DOT, and requires written commitments to control measures and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)).

EPA's review of the Michigan SIP revision indicates that it is consistent with the Act as amended by SAFETEA-LU and EPA regulations (40 CFR part 93, subpart A, and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and therefore EPA has concluded that the submittal is approvable.

III. What action is EPA taking?

EPA is approving a SIP revision submitted by the State of Michigan, for the purpose of establishing transportation conformity criteria and procedures related to interagency consultation, and enforceable commitments to implement transportation related control and mitigation measures.

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 June 9, 2017 without further notice unless we receive relevant adverse written comments by May 10, 2017. 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. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective June 9, 2017.

IV. Statutory and Executive Order Reviews

Under the 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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2017. 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 this **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, Particulate matter, Intergovernmental relations.

Dated: March 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

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

§ 52.1173 Control strategy: Particulates.

* * * * *

(l) Approval—On October 3, 2016, the State of Michigan submitted a revision to their Particulate Matter State Implementation Plan. The submittal established transportation conformity "Conformity" criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

■ 3. Section 52.1179 is amended by adding paragraph (c) to read as follows:

§ 52.1179 Control strategy: Carbon monoxide.

* * * * *

(c) Approval—On October 3, 2016, the State of Michigan submitted a revision to their Carbon Monoxide State Implementation Plan. The submittal established transportation conformity “Conformity” criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

[FR Doc. 2017–07029 Filed 4–17–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0784; FRL–9960–83–Region 10]

Air Plan Approval; Washington: General Regulations for Air Pollution Sources, Southwest Clean Air Agency Jurisdiction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) that were submitted by the Washington Department of Ecology (Ecology) in coordination with Southwest Clean Air Agency (SWCAA) on December 20, 2016. In the fall of 2014 and spring of 2015, the EPA approved numerous revisions to Ecology’s general air quality regulations. However, our approval of the updated Ecology regulations applied only to geographic areas where Ecology, and not a local air agency, had jurisdiction, and statewide, to source categories over which Ecology had sole jurisdiction. Under the Washington Clean Air Act, local clean air agencies may adopt equally stringent or more stringent requirements in lieu of Ecology’s general air quality regulations, if they so choose. Therefore, the EPA stated that we would evaluate the general air quality regulations as they applied to local jurisdictions in separate, future actions. This final action approves the submitted SWCAA general air quality regulations to replace or supplement the corresponding Ecology regulations for sources in SWCAA’s jurisdiction, including implementation of the minor new source review and nonattainment new source review permitting programs.

This action also approves a limited subset of Ecology regulations, for which there are no corresponding SWCAA corollaries, to apply in SWCAA’s jurisdiction.

DATES: This final rule is effective May 10, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2016–0784. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553–0256; email address: hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background Information

On January 19, 2017, the EPA proposed to approve revisions to SWCAA’s general air quality regulations and a limited subset of Ecology regulations to apply in SWCAA’s jurisdiction (82 FR 6413). An explanation of the Clean Air Act (CAA) requirements, a detailed analysis of the revisions, and the EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on February 21, 2017. The EPA received two, separate anonymous comments on the proposal.

II. Response to Comments

Comment #1: The commenter asserted that the EPA’s proposed action is an example of federal overreach on state and local jurisdictions. The commenter also stated that the EPA’s review and proposed approval of the SWCAA regulations violates the Tenth Amendment to the United States Constitution.

Response: Under the CAA, as established and amended by Congress, state and local authorities take the lead in developing State Implementation Plans (SIP) that implement, maintain, and enforce the national ambient air quality standards (NAAQS), which are standards designed to protect public health and welfare from air pollution. In reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. 42 U.S.C. 7410(k); 40 CFR 52.02(a). In this case, EPA has done just that—Washington elected to submit the SWCAA and Ecology SIP revision to the EPA, and the EPA has proposed to approve the submission based on our determination that it meets the requirements of the CAA. We are now finalizing our determination.

With respect to the claim that the EPA’s action in approving this SIP submittal violates the Tenth Amendment, the Supreme Court has repeatedly affirmed the constitutionality of federal statutes, such as Section 110 of the CAA, that allow States to administer federal programs but provide for direct federal administration if a State chooses not to administer it. See *Texas v. EPA*, 726 F.3d 180, 196–7 (D.C. Cir. 2013) (citing *New York v. United States*, 505 U.S. 144, 167–8, 173–4 (1992); *Hodel v. Va. Surface Mining & Reclamation Ass’n, Inc.*, 452 U.S. 264m 288 (1981)).

Comment #2: A second commenter wrote in support of the EPA’s proposed approval of the SWCAA and Ecology SIP revision.

Response: We are now finalizing our proposed determination that the SWCAA and Ecology SIP revision meets the requirements of the CAA.

III. Final Action

A. Regulations Approved and Incorporated by Reference Into the SIP

The EPA is approving, and incorporating by reference, into the Washington SIP at 40 CFR 52.2470(c)—*Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction*, the SWCAA and Ecology regulations listed in Tables 1 and 2 below for sources within SWCAA’s jurisdiction.