

Approved: May 22, 2006.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2005-MI-0001; FRL-8176-6]

### Approval and Promulgation of Air Quality Implementation Plans; Michigan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a June 17, 2005, Michigan petition for exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major sources of nitrogen oxides (NO<sub>x</sub>). The petition is for sources in six of Michigan's eight-hour ozone nonattainment areas, which comprise eleven counties. EPA proposed approval of the petition in a January 5, 2006 rulemaking action. Section 182(f) of the Clean Air Act allows this exemption for areas where additional reductions in NO<sub>x</sub> will not contribute to attainment of the ozone standard. The Grand Rapids, Kalamazoo/Battle Creek, Lansing/East Lansing, Benzie County, Huron County, and Mason County nonattainment areas will each receive an exemption.

**DATES:** This final rule is effective on July 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2005-0001. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <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 Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, 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) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@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. What Is EPA's Analysis of the Supporting Materials?
- II. What Are the Environmental Effects of These Actions?
- III. What Is EPA's Response to Comments?
- IV. What Action Is EPA Taking Today?
- V. Statutory and Executive Order Reviews

#### I. What Is EPA's Analysis of the Supporting Materials?

Michigan submitted the 2002-04 monitoring data for the six ozone nonattainment areas. The eight-hour ozone concentrations for these areas were all below the National Ambient Air Quality Standard (NAAQS) for ozone. EPA records indicate the 2003-05 monitoring data is also below the eight-hour ozone NAAQS for all six areas. Michigan has not implemented NO<sub>x</sub> control provisions in the areas.

EPA's January 14, 2005 document, "Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation" gives the requirements for demonstrating that further NO<sub>x</sub> reduction in an ozone nonattainment area will not contribute to ozone attainment. The guidance provides that three consecutive years of monitoring data below the standard in areas that have not implemented NO<sub>x</sub> controls adequately demonstrates that additional NO<sub>x</sub> reductions will not aid attainment. EPA's approval of the petition is granted on a contingent basis. Michigan must continue to monitor the ozone levels in the areas. Each of the six areas receives its own exemption. If an area violates the standard, EPA will remove the exemption for that area.

#### II. What Are the Environmental Effects of These Actions?

Nitrogen oxides are a precursor in ozone formation. Volatile organic compounds (VOC) are another ozone precursor. The photochemical reactions that form ozone are complex. Reducing

NO<sub>x</sub> (NO and NO<sub>2</sub>) emissions will not always reduce ozone levels. When the ratio of NO to VOC emissions is high, the NO will react with ozone (O<sub>3</sub>) to form NO<sub>2</sub> and oxygen (O<sub>2</sub>). In this environment, the NO<sub>2</sub> will react with hydroxyl (OH) radicals instead of forming ozone. A decrease in NO<sub>x</sub> emissions would cause an increase in ozone formation when these conditions exist. This effect is usually localized.

Because of this chemical reaction, the section 182(f) exemptions should not interfere with attainment of the standard NAAQS for ozone in the six Michigan ozone nonattainment areas. The state demonstrated that the areas were able to hold ozone levels under the NAAQS without employing NO<sub>x</sub> controls. Thus, additional NO<sub>x</sub> controls would not be expected to contribute to attainment. Ozone levels are expected to remain below the standard which will protect human health. If a violation occurs in one of the areas, EPA will remove the exemption for that area and will require additional control measures.

#### III. What Is EPA's Response to Comments?

EPA received one comment on the January 5, 2006 (71 FR 577-579), proposed approval of Michigan's petition. That comment came from the New York State Department of Environmental Conservation (New York). New York was concerned that EPA did not evaluate the impact of the NO<sub>x</sub> waivers on its ozone nonattainment areas. It cited the results of ozone contribution modeling from another EPA program, the Clean Air Interstate Rule. The contribution modeling shows a link between state-wide Michigan NO<sub>x</sub> and VOC emissions and nineteen counties, including the New York ozone nonattainment counties of Erie, Richmond, and Suffolk.

In considering this petition, EPA did not evaluate the impact of the NO<sub>x</sub> waivers on downwind ozone nonattainment areas. This is not a part of the process for evaluating section 182(f) waiver requests. The NO<sub>x</sub> emission reductions required from Michigan under other EPA programs are not affected by granting of the waivers. Also, reductions of other ozone precursors, such as VOC, are unaffected by this action. If called for under other programs, Michigan will be required to reduce its state-wide emissions to address its contribution to nonattainment counties in other states. The Clean Air Interstate Rule will address the specific concern New York expressed by requiring ozone precursor reductions in Michigan and other states

that contribute to the New York ozone nonattainment areas.

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

EPA is approving a Michigan petition for exemptions from the RACT and NSR requirements for major NO<sub>x</sub> sources in six of the state's eight-hour ozone nonattainment areas. These nonattainment areas encompass eleven counties. The Grand Rapids area includes Kent and Ottawa counties. Calhoun, Kalamazoo, and Van Buren counties make up the Kalamazoo/Battle Creek area. The Lansing/East Lansing area consists of Clinton, Eaton, and Ingham counties. Benzie, Huron, and Mason counties are all single county nonattainment areas.

Section 182(f) of the Clean Air Act allows this exemption for areas where a state demonstrates that additional reductions in NO<sub>x</sub> will not contribute to attainment of the NAAQS for ozone. Monitoring data shows the ozone levels in the six areas are now below the NAAQS without utilizing NO<sub>x</sub> controls. These exemptions from the NO<sub>x</sub> requirements in section 182(f) are on a contingent basis. The state used monitoring data to demonstrate that it meets the requirements for the exemption. If an area's monitored level of ozone violates the NAAQS in the future, EPA will remove its exemption.

#### V. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (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*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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 or 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 (65 FR 67249, November 9, 2000).

##### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does 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 (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 Clean Air 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 economically significant.

##### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) 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 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 August 7, 2006. 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, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: May 18, 2006.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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 52.1174 is amended as follows:
  - A. The first paragraph designated as paragraph (c) is redesignated as paragraph (c)(1).
  - B. The second paragraph designated as paragraph (c) is redesignated as paragraph (c)(2).
  - C. Paragraph (w) is added to read as follows:

**§ 52.1174 Control strategy: Ozone.**

\* \* \* \* \*

(w) Approval—On June 17, 2005, the Michigan Department of Environmental Quality submitted a petition requesting the exemption from Clean Air Act oxides of nitrogen control requirements in six 8-hour ozone nonattainment areas. The Grand Rapids, Kalamazoo/ Battle Creek, Lansing/East Lansing, Benzie County, Huron County, and Mason County nonattainment areas each receive an exemption. Section 182(f) of the 1990 amended Clean Air Act authorizes the exceptions. The exemption will no longer apply in an area if it experiences a violation of the 8-hour ozone standard.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 69**

[EPA–HQ–OAR–2004–0229; FRL–8178–3]  
 RIN 2060–AJ72

**Control of Air Pollution From Motor Vehicles and Nonroad Diesel Engines: Alternative Low-Sulfur Diesel Fuel Transition Program for Alaska**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule will implement the requirements for sulfur, cetane and aromatics for highway, nonroad, locomotive and marine diesel fuel produced in, imported into, and distributed or used in the rural areas of Alaska. Beginning June 1, 2010, diesel fuel used in these applications must meet a 15 ppm (maximum) sulfur content standard. This rule will assist the implementation of the programs for highway and nonroad diesel fuels in Alaska and provide some limited additional lead time for development of any necessary changes to the fuel distribution system in Alaska’s rural areas. We believe this additional lead time is appropriate given the circumstances in the rural areas. In 2010, highway and nonroad fuel in rural Alaska will be required to meet the 15 ppm sulfur standard, providing the full environmental benefits of these programs to rural Alaska as well. In addition, fuel used by engines in rural Alaska covered by the new source performance standard (NSPS) for new stationary diesel engines will also be required to meet the 15 ppm sulfur standard in 2010.

**DATES:** This final rule is effective on July 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0229. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically through <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Jeff Herzog or Tia Sutton, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; fax number: (734) 214–4816; telephone numbers: (734) 214–4227 or (734) 214–4018, respectively; e-mail addresses: [Herzog.jeff@epa.gov](mailto:Herzog.jeff@epa.gov) or [Sutton.tia@epa.gov](mailto:Sutton.tia@epa.gov), respectively.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

You are regulated by this rule if you produce, import, distribute, or sell diesel fuel for use in the rural areas of Alaska. The following table gives some examples of entities that must follow the regulations. However, because these are only examples, you should carefully examine the regulations in 40 CFR part 80. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Examples of potentially regulated entities	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>
Petroleum Refiners .....	32411	2911
Petroleum Bulk Stations, Terminals .....	42271	5171
Petroleum and Products Wholesalers .....	42272	5172
Diesel Fuel Trucking .....	48422	4212
	48423	4213
Diesel Service Stations .....	44711	5541
	44719	.....

<sup>a</sup> North American Industry Classification System (NAICS).  
<sup>b</sup> Standard Industrial Classification (SIC) system code.

*Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket

is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> view public comments, access the index listing of the contents of the official

public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket identification number.