

122°21'35" West; north to latitude 37°48'49" North, longitude 122°21'35" West, a point on the northeastern side of Yerba Buena Island.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the Restricted Area for any reason without prior written permission from the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island.

(2) Mooring, anchoring, fishing, transit and/or swimming shall not be allowed within the Restricted Area without prior written permission from the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island, and such agencies and persons as he/she shall designate.

Dated: March 11, 2004.

**Michael B. White,**

*Chief, Operations, Directorate of Civil Works.*

[FR Doc. 04-8600 Filed 4-15-04; 8:45 am]

BILLING CODE 3710-92-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MI84-02; FRL-7647-6]

### Conditional Approval and Promulgation of Implementation Plans: Michigan: Oxides of Nitrogen Rules

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

**ACTION:** Final rule.

**SUMMARY:** EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Michigan on April 3, 2003. The submittal made by the Michigan Department of Environmental Quality (MDEQ) responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." The rules submitted by MDEQ establish a nitrogen oxides (NO<sub>x</sub>) emissions allowance trading program for large electric generating and industrial units, and require reductions from large electric generating and industrial units and cement kilns, beginning in 2004. The intended effect of the regulations submitted by MDEQ is to reduce

emissions of NO<sub>x</sub> to help attain the national ambient air quality standard for ozone. EPA is conditionally approving Michigan's Oxides of Nitrogen Budget Trading Program because it generally meets the requirements of the Phase I NO<sub>x</sub> SIP Call designed to significantly reduce ozone in Michigan and ozone transport in the eastern United States.

**DATES:** This rule is effective on May 3, 2004.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. MI84. All documents in the Docket are listed in the index. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at: Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please contact Douglas Aburano at (312) 353-6960 or [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov) before visiting the Region 5 Office.)

#### FOR FURTHER INFORMATION CONTACT:

Douglas Aburano, Environmental Engineer, Criteria Pollutant Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, fax (312) 886-5824, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "you" refer to the reader of this rule and/or to sources subject to the State rule, and the terms "we," "us," or "our" refer to EPA.

On April 3, 2003, MDEQ submitted a NO<sub>x</sub> emission control plan to the EPA for inclusion in Michigan's SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. The revisions generally comply with the requirements of the Phase I NO<sub>x</sub> SIP Call. Included in this submission are Michigan Rules 802 through 817. The information in this conditional approval is organized as follows:

- I. What Action Is EPA Taking Today?
- II. Statutory and Executive Order Reviews.

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

EPA is conditionally approving revisions to Michigan's SIP concerning the adoption of its NO<sub>x</sub> emission trading rules, which the State submitted on April 3, 2003. The rules meet the requirements of the Phase I NO<sub>x</sub> SIP Call with certain exceptions which EPA identified in our February 26, 2004,

proposed conditional approval (69 FR 8905). In a letter dated January 9, 2004, MDEQ committed to submit fully adopted rules addressing the deficiencies by May 31, 2004. MDEQ is in the process of adopting rules to correct these deficiencies. Once MDEQ has submitted the rule changes to address these deficiencies, we can take action to fully approve the SIP revision. If Michigan does not submit approvable revisions by this date, this conditional approval will automatically revert to a disapproval of the Michigan NO<sub>x</sub> SIP submission.

EPA published in the **Federal Register** on February 26, 2004 (69 FR 8905) a proposal to conditionally approve Michigan's SIP revision. You can find additional information regarding the State of Michigan's submittal and our rationale for conditionally approving it in the February 26, 2004 proposed rule where we described, in detail, the Michigan SIP revision, as well as the deficiencies that Michigan must address before we can fully approve MI's NO<sub>x</sub> trading program. Since we did not receive any adverse comments during the 30 day public comment period, we are finalizing the conditional approval that we proposed on February 26, 2004. Unless this conditional approval is satisfied within 1 year, it will become a disapproval. EPA will publish a document in the **Federal Register** indicating whether the conditional approval was satisfied or became a disapproval.

Pursuant to the good cause exemption in section 553(d)(3) of the Federal Administrative Procedure Act (5 U.S.C. 553(d)(3)), we are making this rule effective on May 3, 2004, which is 15 days after publication of this final action because of the need for the State to allocate allowances to affected sources in a timely manner. Sources will need these allowances for the compliance season which begins on May 31, 2004.

## II. 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 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 regulations as meeting Federal requirements and imposes no additional requirements beyond those imposed by state regulations. 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*

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 program 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 program 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 program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### *Civil Justice Reform*

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

#### *Governmental Interference With Constitutionally Protected Property Rights*

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

#### *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. Section 804

exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 June 15, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 6, 2004.

**Gary Gulezian,**  
Acting Regional Administrator, Region 5.

■ Title 40 of the Code of Federal Regulations, chapter I, 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. Subpart X is amended by adding § 52.1218 to read as follows:

##### **§ 52.1218 Identification of plan—conditional approval.**

The plan revision commitment listed in paragraph (a) was submitted on the date specified.

(a) On April 3, 2003, the Michigan Department of Environmental Quality submitted a revision to the Michigan State Implementation Plan. The revision adds rules which require the reduction of oxides of nitrogen from electric generating units, large industrial commercial and institutional boilers and cement kilns.

(1) *Incorporation by reference.* The following rules are incorporated by

reference: R 336.1802 Applicability under oxides of nitrogen budget trading program, Rule 802; R 336.1803 Definitions for oxides of nitrogen budget trading program, Rule 803; R 336.1804 Retired unit exemption from oxides of nitrogen budget trading program, Rule 804; R 336.1805 Standard requirements of oxides of nitrogen budget trading program, Rule 805; R 336.1806 Computation of time under oxides of nitrogen budget trading program, Rule 806; R 336.1807 Authorized account representative under oxides of nitrogen budget trading program, Rule 807; R 336.1808 Permit requirements under oxides of nitrogen budget trading program, Rule 808; R 336.1809 Compliance certification under oxides of nitrogen budget trading program, Rule 809; R 336.1810 Allowance allocations under oxides of nitrogen budget trading program, Rule 810; R 336.1811 New source set-aside under oxides of nitrogen budget trading program, Rule 811; R 336.1812 Allowance tracking system and transfers under oxides of nitrogen budget trading program, Rule 812; R 336.1813 Monitoring and reporting requirements under oxides of nitrogen budget trading program, Rule 813; R 336.1814 Individual opt-ins under oxides of nitrogen budget trading program, Rule 814; R 336.1815 Allowance banking under oxides of nitrogen budget trading program, Rule 815; R 336.1816 Compliance supplement pool under oxides of nitrogen budget trading program, Rule 816; R 336.1817 Emission limitations and restrictions for Portland cement kilns, Rule 817. These rules became effective in the State on December 4, 2002.

(2) [Reserved]  
(b) [Reserved]

[FR Doc. 04-8451 Filed 4-15-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[CA 112-RECLAS, FRL-7648-8]

### Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; California; Ozone

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to grant a request by the State of California to voluntarily reclassify under the Clean Air Act ("CAA" or "the Act") the San Joaquin Valley Ozone Nonattainment

Area ("San Joaquin Valley Air Basin" or "SJVAB") from a severe to an extreme 1-hour ozone nonattainment area.

We are also taking final action to require the State to submit by November 15, 2004 an extreme area ozone plan for the areas within the SJVAB under the State's jurisdiction that provides for the attainment of the ozone National Ambient Air Quality Standard ("NAAQS") as expeditiously as practicable, but no later than November 15, 2010. This plan must meet the specific provisions of CAA section 182(e). The State must also submit within 12 months of the effective date of this rule, revised Title V and New Source Review rules that reflect the extreme area statutory requirements.

Once effective, this reclassification of the SJVAB terminates the federal offset sanction that was imposed on March 18, 2004 and also terminates the highway sanction and federal implementation plan clocks. The sanction and FIP clocks were started under CAA section 179(a) upon EPA's 2002 finding that the State failed to submit the statutorily required severe area attainment demonstration for the area.

**EFFECTIVE DATE:** This rule is effective on May 17, 2004.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. CA 112-RECLAS. Docket materials are available in hard copy at EPA's Region IX office during normal business hours by appointment. The address is U.S. EPA Region IX—Air Division, 75 Hawthorne Street, San Francisco, CA 94105-3901. This Regional Office is open from 8 am to 5 pm, Monday through Friday, excluding legal holidays.

#### FOR FURTHER INFORMATION CONTACT:

David Wampler, EPA Region IX, Air Division (AIR-3), 75 Hawthorne Street, San Francisco, CA, 94105; telephone: (415) 972-3975; fax: (415) 947-3579; e-mail: [wampler.david@epa.gov](mailto:wampler.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

### I. Proposed Action

On February 23, 2004 (69 FR 8126), EPA proposed to grant a request by the State of California to voluntarily reclassify under Clean Air Act ("CAA") section 181(b)(3), the San Joaquin Valley Ozone Nonattainment Area ("San Joaquin Valley Air Basin" or "SJVAB") from a severe to an extreme nonattainment area for the 1-hour ozone

standard.<sup>1,2</sup> In addition, we proposed that the State submit, by no later than October 1, 2004, an extreme area plan addressing the requirements of CAA section 182(e) and that the State submit revised New Source Review rules and Title V program revisions for the areas within the District's jurisdiction within 12 months from the effective date of the final reclassification.

There are several Indian reservations located within the SJVAB. In our proposed action, we noted that states typically have no jurisdiction under the CAA in Indian country and that California has not been approved by EPA to administer any CAA programs in Indian country. We also stated that, as a matter of EPA's federal implementation of relevant provisions of the CAA over Indian country within the SJVAB, we believe these areas of Indian country should be reclassified to extreme. We contacted all seven tribes with reservations located within the SJVAB to inform them that we intend to include their reservations in the reclassification and to provide the tribes the opportunity for consultation. None of the seven tribes we contacted requested consultation or submitted comments on our proposed action.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received three comment letters.<sup>3</sup> Our response immediately follows our summary of each comment letter.

**Comment #1:** On behalf of the Association of Irrigated Residents ("AIR"), The Center on Race Poverty and The Environment requested that EPA approve the State's reclassification request with a contingency that would allow us to rescind the extreme

<sup>1</sup> Letter from Catherine Witherspoon, Executive Officer, California Air Resources Board ("CARB"), to Mr. Wayne Nastri, Regional Administrator, EPA Region IX, dated January 9, 2004. In the letter, CARB transmits to EPA and endorses San Joaquin Valley Unified Air Pollution Control District ("District") Resolution No. 03-12-10 requesting the reclassification.

<sup>2</sup> In the very near future, EPA expects to issue new regulations to implement the 8-hour ozone standard. At that time we will be able to fully evaluate how the transition to the 8-hour standard will impact existing requirements to implement the 1-hour ozone standard.

<sup>3</sup> On April 5, 2004, EPA received an additional comment letter from ChevronTexaco dated March 25, 2004 and postmarked April 1. Although that letter is outside the comment period, EPA has decided to include it in the docket for this rule. ChevronTexaco makes the same comment as the Western States Petroleum Association ("WSPA") (discussed below) regarding additional time for the District to submit required SIP revisions and the extreme area plan.