



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0467; FRL-10006-00-Region 5]

**Air Plan Approval; Michigan; Second Limited Maintenance Plans
for 1997 Ozone NAAQS;**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Michigan. On July 24, 2019, the state submitted the 1997 ozone National Ambient Air Quality Standard (NAAQS) Limited Maintenance Plans (LMPs) for the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County areas. EPA is approving these Michigan LMPs because they provide for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. EPA proposed to approve the submission on December 4, 2019, and received two comments. This approval makes certain

commitments related to maintenance of the 1997 ozone NAAQS in these areas federally enforceable as part of the Michigan SIP.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2019-0467. All documents in the docket are listed on the 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 through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. 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, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information

On December 4, 2019 (84 FR 66347), EPA proposed to approve the 1997 ozone NAAQS LMPs for the Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County areas, submitted by Michigan on July 24, 2019. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking. EPA will not reiterate the reasons for approval in this rule. The public comment period ended on January 3, 2020. EPA received two comments on the proposal.

II. Response to Comments

EPA received two anonymous comments during the comment period. A summary of each comment precedes EPA's response. The full comments are in the rulemaking docket, see Addresses for details on accessing the docket.

Comment 1: Please explicitly state when the second maintenance period ends. Also, please explain what happens to the state's maintenance plan once the second maintenance plan ends.

Response: EPA approved maintenance plans for the Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek,

Lansing-East Lansing, and Mason County areas effective on May 16, 2007 (72 FR 27425). The LMPs for these areas provide for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. Thus, the maintenance period ends on May 16, 2027.

At the end of the 20-year maintenance period the maintenance plan remains in place and in effect. A state may revise its SIP, including its maintenance plan, after the 20-year period, subject to a CAA section 110(l) demonstration.

Comment 2: EPA should disapprove the contingency measures until the state comes up with better, more specific and not yet implemented contingency measures.

Response: Contrary to the commenter's assertion, Michigan has included a list of specific potential contingency measures in its maintenance plan. These measures are the same list as was included in the original maintenance plans for the areas. While some of the measures may have been implemented, this is certainly not the case for all such as portable fuel container replacement rule, reduce idling program, transit improvements, etc. Even if the State has adopted some measures in a category, that doesn't preclude the State from adopting additional measures in the same category. For example, if a state had adopted a reduced idling program, the state could still

implement a more stringent program across a wider portion of the vehicle fleet. Furthermore, because it is not possible to determine what control measure will be most appropriate and effective should a contingency measure be triggered at some point in the future, Michigan is not limited to selecting measures only from its list. If a contingency measure is triggered, Michigan may adopt a contingency measure from this list or chose another contingency measure which has been determined to be effective.

III. Final Action

EPA is approving the LMPs for the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County areas in Michigan for the 1997 ozone NAAQS. EPA finds the LMPs are adequate to provide for maintenance of the 1997 ozone NAAQS in these areas through the end of the second 10-year portion of the maintenance period.

IV. Statutory and Executive Order Reviews.

Under section 175A of the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. 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. 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, Intergovernmental relations,
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 21, 2020.

Kurt A. Thiede,
Regional Administrator, Region 5.

Amend 40 CFR part 52 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. In § 52.1170, the table in paragraph (e) is amended by revising the three entries for “1997 8-hour ozone” under “Maintenance Plans” to read as follows:

§ 52.1170 Identification of plan.

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(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * * * *				
Maintenance Plans				
* * * * *				
1997 8-hour ozone	Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County	7/24/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	2 nd limited maintenance plan.
1997 8-hour ozone	Benton Harbor, Cass County, and Muskegon	6/13/2006, 8/25/2006, and 11/30/2006	5/16/2007, 72 FR 27425	
1997 8-hour ozone	Detroit-Ann Arbor	3/6/2009	6/29/2009, 74 FR 30950	
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