withdraw the direct final rule and respond to all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. If you are interested in commenting on this action, you should do so at this time.

DATES: Written comments must be received on or before March 9, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD) are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–2140, E-Mail Address: *pratt.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule, which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Implementation Plans, Reporting and recordkeeping requirements.

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

Dated: January 4, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–1825 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL198–1b; FRL–6935–5]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve a negative declaration submitted by the State of Illinois which indicates there is no need for regulations covering the industrial cleaning solvents category in the Chicago ozone nonattainment area. The Chicago ozone nonattainment area includes Cook County, DuPage County, Aux Sable and Goose Lake Townships in Grundy County, Kane County, Oswego Township in Kendall County, Lake County, McHenry County and Will County. The State's negative declaration regarding industrial cleaning solvents category sources was submitted to USEPA in a letter dated December 23, 1999.

DATES: Written comments must be received on or before March 9, 2001.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

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I. What Action Is USEPA Taking Today?

USEPA is proposing to approve a negative declaration submitted by the State of Indiana on December 23, 1999. This negative declaration concerns a source category located in the Chicago ozone nonattainment area which is classified as a severe nonattainment area for the pollutant ozone. The negative declaration indicates that the State has searched its emissions source inventory for the Chicago ozone nonattainment area and determined that there are no unregulated sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the industrial cleaning solvents category.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: January 8, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–1823 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI–52–01–7260, FRL–6939–6]

Approval and Promulgation of Implementation Plans; Michigan; Emission Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Michigan's State Implementation Plan (SIP) revision for ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. EPA is proposing to approve the revision under section 110 of the Clean Air Act (Act). This SIP revision, submitted July 21, 1999 relates to Michigan's Emission Averaging and Emission Reduction Credit Trading Rules, which provide sources with flexibility in meeting regulatory requirements for reducing emissions of ozone precursors and criteria air pollutants other than ozone. This proposed approval would allow sources in Michigan to use emission averaging and trading for compliance with SIP requirements. EPA will not publish final approval until receiving some revisions to the SIP that Michigan will provide.

DATES: Comments on this proposed action must be received by March 9, 2001.

ADDRESSES: You should address written comments to: Carlton T. Nash, Chief,

Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal for this rulemaking are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Alexis Cain before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Alexis Cain at (312) 886–7018.

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) is proposing to approve the Michigan Department of Environmental Quality's (Michigan's) Emissions Averaging and Emissions Credit Trading Rules. In a previous action (62 FR 48972, September 18, 1997), EPA proposed approval of an earlier version of this program (submitted as an optional revision to the SIP on April 17, 1996) ''upon correction of certain deficiencies'' that were identified in the proposed action. EPA believes that Michigan has corrected these deficiencies in a SIP revision submitted July 21 1999. EPA is proposing approval, rather than publishing final approval, to give opportunity for public comment on the revised SIP submission. In addition, upon further review, EPA has identified additional areas requiring clarification or deficiencies that need Michigan must correct. EPA will not finalize approval until receiving these clarifications and corrections from Michigan.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

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EPA's Action

What Action Is EPA Proposing Today?

EPA is proposing approval of Michigan's revision to the State Implementation Plan (SIP) submitted to EPA on June 21, 1999. This SIP revision relates to Michigan's Emissions Averaging and Emission Reduction Credit Trading Rules (Michigan's trading program).

What Is Emissions Trading?

Air emission trading is a program where one source reduces its emissions below the level it is required to meet, and below the level it has been meeting. This source then sells or trades these reductions as credits to another source that is then allowed to release emissions above its required levels. In return for this flexibility, the second source must purchase additional credits beyond those needed to comply, therefore reducing overall emissions. Emissions trading uses market forces to reduce the overall cost of compliance for sources, while maintaining emission reductions and environmental benefits.

What Is Open Market Emissions Trading?

In an open market emission trading program, a source generates short-term emission reduction credits, by reducing its emissions. EPA generally refers to such credits as ''discrete emission reductions,'' but this proposal uses the term ''emission reduction credits (ERCs)'' since this is the term used under Michigan's trading program. The source may then use these credits at a later time, or trade them to another source to use at a later time. Open market programs rely on many sources continuing to generate new credits to balance emissions increases caused by other sources using previously generated credits.

What Is Emission Averaging?

Emission averaging provides a source or group of sources (typically stationary sources) flexibility in complying with a rate-based regulatory limit. Under an emission averaging program, a source that exceeds its rate limit could comply with that limit by averaging its emissions with a second source emitting below its limit.

What Guidance Did EPA Use To Evaluate Michigan's Trading Program?

EPA's basis for evaluating Michigan's trading program is whether it meets the SIP requirements described in section 110 of the Act. The primary guidance used to determine whether the program meets these requirements is EPA's September 18, 1997 Proposed Action on Michigan's Trading Rules. This proposed approval identified the actions that Michigan needed to take prior to receiving full approval.

The proposed approval was guided by EPA policy on emission trading as expressed in 1994 and 1995 guidance. In 1994, EPA issued Economic Incentive Program (EIP) rules and guidance (40 CFR part 51, subpart U), which outlined requirements for establishing EIPs that states are required to adopt in some cases to meet the ozone and carbon monoxide standards in designated nonattainment areas. There is no requirement for Michigan to submit an EIP, so Michigan's program need not necessarily follow the EIP rule. Nonetheless, subpart U also contains guidance on the development of voluntary EIPs, which EPA has used in the evaluation of Michigan's program.

EPA has also published an August 3, 1995 proposed policy on open market trading programs (60 FR 39668)and an August 25, 1995 model open market trading rule (60 FR 44290). EPA's proposed policy describes the elements of an open market trading program that EPA considers to be desirable and necessary for a program to be approvable as a SIP revision. The proposed policy, which was never finalized, also allowed states to adopt rules that varied from the proposed model rule. In a March 10, 1998-letter from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation to Congressman Thomas J. Bliley, EPA clarified its policy on open market trading. The letter says EPA will work with states to develop open market programs tailored to their individual circumstances, using the August 1995 proposal as guidance.

Subsequently, on September 15, 1999, EPA published a revised proposed Economic Incentive Program guidance (64 FR 50086) which contains additional guidance on open market trading. EPA has not yet released a final revision to the EIP of 1994. Since EPA

had not proposed revised guidance when Michigan sent its SIP revision request, EPA is not using the revised guidance (with one exception) in reviewing Michigan's program. EPA is using one part of the proposed EIP guidance in the evaluation of Michgan's program: the guidance on hazardous air pollutants (HAPs) as a result of trading of VOC, to clarify Michigan's obligations with regard to this issue, which was identified in the September 18, 1997 **Federal Register**. This guidance is in section 17.2 of the EIP proposed on September 15, 1999.

Due to EPA's lack of experience with open market trading programs and the many issues that such programs raise, EPA will use the final EIP guidance as a basis for re-evaluating Michigan's trading program, in coordination with the State, to ensure that its operation is consistent with the Clean Air Act and federal regulation. EPA will notify the State of any deficiencies, within 18 months after EPA issues a final EIP guidance. As with any SIP, EPA may require Michigan to revise the trading program where necessary and re-submit it according to the requirements and deadlines under section 110(k)(5) of the Act. According to section 110(k)(5), Michigan may have up to 18 months to revise and re-submit the trading program after EPA notifies the State of any deficiencies.

What Is EPA's Evaluation of Michigan's Program?

EPA believes that Michigan's program is approvable as a revision to the SIP, and proposes to approve the SIP revision of July 21, 1999, upon receipt of additional materials from Michigan. This July 21, 1999 submittal replaces the April 17, 1996 submittal that was the subject of prior proposed rulemaking. EPA provided a description and evaluation of Michigan's trading program in the September 18, 1997 **Federal Register**. This proposal provides a brief description of some of the features of the program that are particularly important to environmental protection, then describes the resolution of issues identified in the September 18, 1997 proposal.

Environmental Protection

Michigan's trading program allows both emission averaging and open market trading. It includes several features designed to prevent averaging or trading from harming air quality. In deciding to propose approval of Michigan's trading program, EPA has considered the overall structure of the program and the various elements designed to protect the environment. EPA has determined that the program is likely to result in environmental improvement, with little risk of environmental degradation. Some features of Michigan's program may not be approvable within an emission trading program that has a different overall design or that lacks all of the environmental protections Michigan's program contains.

A significant number of emission reductions generated under Michigan's program will expire without being used to allow offsetting emission increases. Under Rule 1212, ten percent of emission reductions generated under Michigan's program must be retired to protect the environment, with VOC and NO_X ERCs used for compliance with an ozone season limitation discounted an additional ten percent annually until expiration. All ERCs expire after five calendar years beyond the year of generation. Under Rule 1205, NO_X and VOC ERCs cannot be used during the ozone season unless they were generated during the ozone season.

Rule 1204(1) prohibits use of ERCs or emissions averaging that would cause a violation of the National Ambient Air Quality Standards (NAAQS) or other requirements of the Clean Air Act. Rule 1204(13) requires that ERCs be ''real, surplus, enforceable, permanent, and quantifiable,'' and generated using an accurate, reliable and replicable quantification method. These requirements are backed by notice review procedures that allow Michigan to identify cases where these requirements are not met, before ERCs are generated or used.

Credits cannot be generated by emission reductions that are already required by regulation. Rule 1204(1) requires that the use of credits be consistent with reductions required for reasonable further progress and attainment demonstrations. Moreover, reductions cannot generate credit unless they are ''surplus,'' defined in Rule 1201(hh) as reductions below an established source baseline (of actual emissions) not mandated by any applicable requirement, including the SIP, an attainment demonstration, reasonable further progress plan, or maintenance plan. Michigan staff have indicated that the intention of this definition is to exclude from eligibility for generation of emission reduction credit all reductions that are relied upon (as well as mandated) by an attainment demonstration, reasonable further progress plan, or maintenance plan. EPA expects, as a condition of approval, to receive clarification of this position in writing.

Under Rules 1213(5) and 1214(5), ERCs cannot be generated or used until Michigan declares a notice of generation or use to be ''complete.'' A completeness determination does not constitute ''approval,'' leaving sources liable for generation or use of bad credits or for failure to comply with a requirement. However, the completeness determination gives Michigan a significant opportunity to prevent generation of ERCs that are not adequate and to prevent ERC uses that create a risk of violating the NAAQS or other Clean Air Act provisions, including prevention of significant deterioration (PSD) increments, attainment plans, maintenance plans, reasonable further progress, and transportation conformity. Moreover, the completeness review includes a determination of whether trading will result in increased emissions of toxic pollutants at levels that create risk to public health.

EPA has determined Michigan's July 21, 1999 SIP revision satisfies the conditions for approval proposed in the September 18, 1997 **Federal Register**. These conditions are as follows:

Trading of Oxides of Nitrogen: EPA stated that while the intent of Michigan's trading program seemed to be to allow trading of NO_X, the ozone precursor, as well as NO_2, the criteria pollutant, the rules fail to specify that NO_X is eligible for trading. For NO_X to be eligible for trading, EPA proposed that Michigan must add it to the list of compounds eligible for trading.

The July 21, 1999 SIP revision makes this change.

Ownership claims: EPA noted that circumstances could arise in which ownership of emissions reductions is unclear, for instance if the manufacturer of a device that reduces auto emissions and the owner of an auto fleet that utilized these devices both claimed credit for the same reductions. EPA proposed that Michigan ''must address the issue of ownership claims'' in its procedures for determining the completeness of notices of credit generation.

The July 21, 1999 SIP revision includes the State's Notice of ERC Generation Review Procedures, which require Michigan staff to review notices to determine whether ''all or a part of the emission reductions being claimed have previously been used for emission averaging (NOA) or for ERC generation.'' If so, then a finding of ''incomplete'' must be rendered under Rules 1213(4)(b) and (c), which require ERC generators to certify that emission reductions being claimed have not previously been used for emission

averaging or ERC generation. Thus, Michigan has effectively adopted a ''first-come, first-served'' approach to the issue of who owns emission reductions which might have competing ownership claims.

ERC Generation Start Date: EPA expressed concern about provisions of Michigan's trading program that allow credits to be generated prior to the enactment of the program (March 16, 1996), from actions starting in 1991. Michigan allowed such credits to be registered, after being discounted 50 percent, although no such credits can be registered after March 16, 1997. These credits, like all credits generated in Michigan's program, would expire five years beyond the year the reductions occurred. EPA noted that credits generated from actions occurring prior to the enactment of the rule ''could flood the market, creating widespread use of cheap credits and discouraging the generation of old credits.'' Thus, EPA proposed that Michigan must provide ''an accounting of the number of pre-enactment credits generated and the remaining life of these credits, and an analysis which demonstrates to EPA's satisfaction that the potential use of these credits is unlikely to have a detrimental impact on attainment or maintenance of the NAAQS or any other requirement of the Clean Air Act.''

Michigan has provided an analysis that shows that 8,309 NO_X ERCs were generated in 1995, of which none have been used. These ERCs expired on January 1, 2001. In addition, 3,143 NO_X ERCs were registered in 1996, prior to program enactment, of which 1,711 have been used or retired, and the balance of which will retire January 1, 2002. None of these NO_X ERCs have been used to allow emissions increases in Michigan (all of the NO_X ERCs used have been retired under consent decrees or used as voluntary demonstrations of emission trading). Moreover, it is highly unlikely that these NO_X ERCs will be used in Michigan given that there is no regulatory incentive to use NO_X ERCs prior to 2004.

For CO, 74 pre-enactment ERCs have been generated, all of which will be used in 1999 ''to temporarily satisfy offset requirements as ordered by a Federal Judge.'' This use of CO credits does not lead to an emission increase that would not otherwise have occurred, and could not have a detrimental impact on air quality.

For VOCs, 11 ERCs expired, unused, on January 1, 1999. Twenty-nine VOC ERCs have been used, 89 expired at the end of 1999, and 66 will expire either at the end of 2000 or 2001. These amounts of VOC credits are negligible, and their use poses no threat to air quality.

EPA agrees that use of pre-enactment ERCs so far and the potential future use of remaining pre-enactment ERCs will not have a detrimental impact on attainment or maintenance of the NAAQS or any other requirement of the Clean Air Act.

Activity Level Reductions

EPA proposed that provisions of Michigan's rule that allowed use of credits generated through activity level reductions (production curtailments or shutdowns) were unacceptable. Use of such credits could cause emissions to be higher than they would be in the absence of the trading program, threatening the integrity of Michigan's attainment and maintenance plans. EPA suggested three different options that Michigan could use to correct this program deficiency: prohibiting generation of shutdown and curtailment credits; prohibiting use of shutdown credits in nonattainment and maintenance areas; and, demonstrating that use of such credits would not be contrary to Michigan's attainment and maintenance plans. Michigan has chosen to incorporate in its trading program rules a prohibition against use of shutdown credits in nonattainment and maintenance areas.

Michigan's rule contains additional unique protections against the negative consequences of shutdown and curtailment credits, through limiting both their generation and their use. Michigan's program creates significant barriers to the generation of credits through shutdowns and especially through curtailment. Production curtailment credits can be generated only if the generator informs MDEQ of this credit-generation strategy ahead of time (Rule 1208(5)). Thus, to generate credits during a production slowdown, the source would have to plan the slowdown and would have to adopt an enforceable requirement not to increase production. As a result, no credits were successfully generated through production curtailment in Michigan during the first three and half years of program operation, a period when 5,789 tons of VOC reductions were registered. In addition, no source has provided the notice required under Rule 1208(5) to generate credits through production curtailment in the future. Moreover, generation of credits from curtailment (and shutdowns) is prohibited if the shutdown or curtailment leads to emissions shifting among sources under common ownership or control (see Rule 1207(5)). An additional limitation on generation of shutdown credits is that such credits can be generated for only five years after the shutdown occurs (see Rule 1208(6)).

In addition to these limits on generation of credits from shutdowns and curtailment, Michigan is unlike most open market programs in that it limits the ability of sources to generate credit while increasing production. Michigan bases credit generation on reductions in emissions below prior actual levels, as opposed to reductions from what emissions would have been based on activity levels during the generation period. In other words, most open market programs create a baseline for reductions based on historical emissions rates times activity level during the period of generation, while Michigan's program creates a baseline based on actual emissions. Thus, in comparison with other open market programs, Michigan's program limits credit generation at sources that increase production, partially offsetting the potential generation of credits from sources that reduce production.

Moreover, as noted above, unless approved by EPA, Michigan's program prohibits the use of credits generated from production shutdown, except as offsets, in nonattainment and maintenance areas (see Rule 1204(7)), eliminating the concern that use of such credits could compromise attainment and maintenance demonstrations. This exception for offsets is acceptable, since use of reductions based on activity level reductions is already allowed under the new source review program.

As a result of these protections, curtailment credits have not been generated, and shutdown credits have been generated but not traded in Michigan, apparently because of the limitations on their use. Thus, EPA concludes that no damage to the environment has or will occur as the result of shutdown and curtailment credits in Michigan. EPA expects to review this aspect of Michigan's SIP again after finalizing the EIP guidance.

Quantification Protocols

EPA noted the importance of high quality emissions quantification protocols to ensure that ERCs are based on real reductions, surplus to all applicable requirements, that are enforceable, permanent, and quantifiable. To assure the quality of emissions quantification protocols, EPA proposed that Michigan must ''incorporate into the emissions trading rules a requirement that sources in categories without EPA-approved protocols must follow a set of EPA-approved protocol development criteria * * * and second, commit in the SIP to

require use of existing and future EPA-approved protocols for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA.'' EPA provided the protocol development criteria to Michigan in a July 1, 1997 letter from David Kee to Dennis Drake.

The July 21, 1999 SIP revision makes the changes that EPA specified. Rule 1209 now requires any source that generates or uses credits to use a protocol that has been federally-approved for the purpose of emission reduction credit trading, where one exists for the relevant source category. Where a federally-approved protocol does not exist, the source must use either: a protocol that the State or EPA has approved for purposes of demonstrating compliance with applicable requirements, provided that this protocol also meets a list of criteria specified in the rules; or a new or alternate emission monitoring and quantification protocol which Michigan has approved for purposes of emission averaging or emission reduction credit trading. All emissions quantification protocols must be consistent with promulgated state and federal procedures.

Michigan has recently revised its procedures for the review of notices of generation to require, in cases where reductions will be quantified based on a quantification technique that is not in a Title V source's operating permit, that the source will not be able to generate credits until the permit is revised to reflect the new technique. Thus, for Title V sources, credit generation must always be based on a measurement method specified in the permit. This revised procedure was not included in the July 21, 1999 SIP submission; Michigan must submit this revised procedure prior to receiving final approval.

Mobile source credits must additionally be consistent with federally approved mobile models for the emission reduction credit generation year, and consistent measurement and calculation methods which Michigan or EPA have approved.

Synthetic Minor Sources

A ''synthetic minor'' source is one that has the potential to emit at major source levels defined by the New Source Review (NSR) program, but whose emissions are limited by its permit to levels below those that would subject it to the major source requirements of NSR. Synthetic minor permits frequently limit production or hours of operation to limit emissions. The version of Michigan's trading rules reviewed in the September 18, 1997 proposed rulemaking allowed synthetic minor sources temporarily to increase emissions above major source thresholds, without being subject to major source requirements.

EPA noted that allowing sources to exceed major source thresholds without being subject to major source requirements could lead to a loss of the significant emission reduction benefits that can occur when sources are subject to New Source Review. Therefore, EPA proposed that Michigan must remove this provision from the trading rules.

The July 21, 1999 SIP revision makes this change, as requested.

Offsets and Netting

EPA proposed that Michigan's rules must state that ERCs may be used for offsets and netting only in a manner consistent with New Source Review requirements. This is to ensure that Michigan's trading rule regulations are bound by the offset and netting requirements of the New Source Review program. For instance, this includes the requirement that offsets must be permanent, quantifiable, and federally enforceable, as these terms are defined in the New Source Review regulations.

The July 21, 1999 SIP revision makes this change in Rule 1204(8), and also removes netting from the list of appropriate uses of credits.

Ownership Prior to Use

EPA proposed that Michigan's rules must require ERCs to be owned prior to use, and to specify that failure to hold sufficient credits is a violation. Without such provisions, sources could stay in compliance simply by ''trueing up'' after having exceeded their emission limits.

The July 21, 1999 SIP revision makes these changes, in Rule 1216(5).

Use Baseline

EPA proposed that Michigan's rules must include a definition of user source baseline.

The July 21, 1999 SIP revision makes this change, defining user source baseline in Rule 1201(e) as ''the allowed level of emissions specified by the applicable requirement with which emission reduction credits will be used to maintain compliance.''

Geographic Restrictions on Use of Ozone Precursor ERCs

The version of Michigan's trading rules reviewed in the September 18, 1997 **Federal Register** lacked geographic restrictions on trading, and would have allowed sources in nonattainment and maintenance areas to use ERCs generated in distant attainment areas. EPA proposed that geographic restrictions on trading were required, to prevent use in areas of poor air quality of credits generated in areas of good air quality. EPA proposed prohibiting use in nonattainment or maintenance areas of VOC ERCs generated more than 100 kilometers beyond the area boundary, and of NO_X ERCs generated more than 200 kilometers beyond the area boundary.

For VOC, the July 21, 1999 SIP revision establishes the suggested geographic restrictions, slightly modified, in Rules 1211(6) and (7). For the purpose of these geographic restrictions, adjacent nonattainment and maintenance areas are counted as a single area, and the boundary for trading extends to the entirety of any county that lies partly within 100 kilometers of the nonattainment or maintenance area. EPA believes that these modifications do not threaten air quality in nonattainment or maintenance areas, and that they serve the goals of administrative simplicity and establishing healthier markets for trading.

For NO_X, Rule 1211 (4) allows trading within Michigan without geographic restrictions, as long as the use area is not a nonattainment area for NO_2. EPA is now willing to accept this aspect of Michigan's trading program because of modeling done by the Ozone Transport Assessment Group showing that NO_X trading throughout the eastern United States would not have a detrimental impact on ozone concentrations in nonattainment areas.

Geographic Restrictions on Use of Criteria Pollutant ERCs

EPA noted that trading criteria pollutants other than ozone, even between adjacent sources, could lead to air quality problems. Emissions of these pollutants have highly localized effects, and ambient concentrations depend not only on the emission rate but also on factors such as stack height. Therefore, EPA proposed to require inclusion in the SIP of procedures that the State would follow to prevent uses of credits or emission averaging that would cause violations of the NAAQS or other relevant provisions of the Clean Air Act.

The July 21, 1999 SIP submission includes procedures for reviewing notices of ERC use and notices of emission averaging. These procedures require a review of proposed uses of ERCs or of emissions averaging above de minimus levels. These de minimus levels are: VOC–40 tons; NO_X/NO_2–40 tons; CO–100 tons; SO_2–40 tons; PM_{10}–15 tons, and lead–0.6 tons. For CO, SO_2,

PM_{10} and lead, this review includes a modeling analysis. The State will not find the notice complete if the review reveals that the proposed use would result in a NAAQS violation or overconsumption of PSD increment, or be inconsistent with an attainment demonstration, maintenance plan, or any applicable requirement. The State will also find the notice incomplete if the source does not provide sufficient information to make this determination. These requirements address the concern identified in EPA's prior proposed rulemaking.

Public Availability of Information

EPA proposed that Michigan ''must ensure access to information collected by sources as part of an environmental self-audit that demonstrated erroneous or willful generation or use of invalid credits.''

In a December 12, 1997 letter to Russell J. Harding, Director of the Michigan Department of Environmental Quality, from Steven A. Herman, EPA stated that ''the changes to [the Michigan audit privilege and immunity law] * * * along with the Michigan Department of Environmental Quality's commitment in your July 1 letter on the use of confidentiality agreements and the interpretations by the Attorney General, address the U.S. Environmental Protection Agency's (EPA) concerns regarding the effect of [the audit law] on delegated, authorized and approved programs.'' Therefore, EPA believes that Michigan's self audit law no longer poses a barrier to access to information, collected during environmental audits, regarding generation or use of invalid credits.

Hazardous Air Pollutant Emissions

EPA noted that trading of VOC and particulate matter can affect emissions of hazardous air pollutants (HAPs). Trading could result in increased overall emissions of HAPs, or creation of localized ''toxic hotspots.'' EPA proposed that prior to final approval, Michigan must require facilities to divulge the effect of emission trading on HAP emissions, and to examine the effects of the trading program on HAP emissions as part of the periodic program performance audit.

Since publication of the September 18, 1997 proposal, EPA has developed additional guidance on treatment of HAP emissions in trading programs, related specifically to HAP emissions that are VOC. This guidance is in section 17.3 of the proposed revisions to EIP guidance (62 FR 50086). EPA is applying this supplemental guidance because of the significance of this issue and the lack of prior guidance. Under this guidance, VOC trading programs must contain the following: Consideration in program design of options for prevention and/or mitigation of unacceptable impacts from VOC trades; sufficient publicly-available information available to allow for meaningful public review and participation; public participation in program design, implementation and evaluation; and periodic program evaluations to evaluate the impact of VOC trades on the health and environment of local communities.

The emissions trading program includes provisions that directly protect against significant localized increases in HAP emissions. Rule 1204(3) states that emissions averaging or credit use is prohibited if it would cause an increase in the maximum hourly emission rate of any toxic air contaminant (TAC),[1] unless it can be demonstrated that the increase will not ''cause or exacerbate'' an exceedance of a TAC screening level set under Michigan's air toxics rules. Air contaminant screening levels are ambient air pollution concentrations that are protective of public health. To determine whether a source has exceeded a screening level, the State performs a modeling analysis that predicts, using conservative assumptions, the maximum ambient air concentration that would result from a source's emissions of the toxic air contaminant.

Rule 1204(3) applies to increases in TACs that result from use of credits, but not to foregone decreases. However, VOC RACT has already been implemented statewide in Michigan, so there is negligible potential for existing sources to use credits to forego reductions in VOCs that would otherwise be required.

Rule 1204(3) could create incentives for some sources to reduce emissions of toxic pollutants, to become eligible to use ERCs for compliance with VOC emission limits. In the absence of the emissions trading program, Michigan's air toxics rules are invoked only when sources apply for a permit to install. Thus, existing sources constructed prior to the toxics rules becoming effective (in 1992) may emit toxic air contaminants in amounts that exceed a screening level. As a result of this provision of Michigan's trading program, such sources would be unable to use ERCs that would result in any increase in maximum hourly emissions of that TAC (since such an increase would ''exacerbate'' an exceedance).

Moreover, Rule 1204(4) allows Michigan to prohibit emission averaging or ERC uses that would result in increased emissions of a list of pollutants that are of particular concern in Michigan and in the Great Lakes region generally. Michigan can prohibit such uses if it determines that they would be inconsistent with the Clean Air Act or ''the protection of public health, safety, or welfare.'' These pollutants are: Mercury; alkylated lead compounds; cadmium; arsenic; chromium; polychlorinated biphenyls; chlordane; octachlorostyrene; toxaphene; hexachlorobenzene; benzo(A)pyrene; DDT and its metabolites; 2,3,7,8-tetrachlorodibenzo-p-dioxin; 2,3,7,8-tetrachlorodibenzofuran.

The structure of Michigan's program makes it likely that emissions trading will lead to decreases in HAP emissions, including in overburdened communities. In addition to the direct protections against HAP increases in the trading program, the program creates incentives for overall reductions in HAP emissions by encouraging reductions of VOC. Besides the ten percent reduction in all ERCs registered, VOC (and NO_X) ERCs used to comply with an ozone season limitation are reduced a further ten percent each year until expiration. Expiration of ERCs after five years also makes it likely that reductions will be generated without being used. Moreover, the availability of ERCs as a cost-effective means of compliance will allow the State to refuse to grant exemptions from regulatory requirements based on economic or technical infeasibility. Thus, sources that would not be required to make any VOC reductions in the absence of the program can be required to purchase reductions from other sources. In addition, it should be noted that Rule 1204(2)(a) prohibits use of credits to comply with federal or State limits on emissions of toxic pollutants, including federal new source performance standards, national emission standards for hazardous air pollutants, or ''a maximum achievable control technology requirement established for a hazardous air pollutant under section 112 of the federal clean air act.'' This provision prevents use of credits for compliance with any MACT standard, whether established through a national standard or on a case-by-case basis.

[1] TACs, under Michigan's air toxics rules, are defined as any air contaminant for which there is no national ambient air quality standard and which is or may become harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities and duration. Forty substances are specifically exempt from the definition of toxic air contaminant, including such things as inert gases, nuisance particulates, and substances that have relatively low toxicity. HAPs are included.

The public will have access to substantial information about the effects of emissions trading on HAPs. Information about trading activity, including quantity of credits generated, traded and used by any source, is posted electronically on Michigan's web site. This information allows tracking of VOC trades and use not only at the aggregate level, but at individual companies or sources. Any member of the public that wishes to find out about the effects of a particular trade or group of trades on HAPs can request additional data from the Michigan Department of Environmental Quality. Michigan has committed in the SIP to ''make the data, calculations, and results of any cumulative or individual (e.g., even individual screening level checks * * *) air toxics analysis available to the general public upon request.'' Such information will include speciation of TACs that are increased as a result of credit use.

Sources will be required to submit sufficient information for air toxics analyses to be performed. No source can use credits without submitting a notice of use to the State and the State declaring the notice to be ''complete.'' The State's notice of use review procedures require that for credit uses that would result in an increase in emissions of a TAC, ''the notice submittal must, at a minimum, include sufficient information * * * to make the evaluation,'' including period of use, the pollutants in question, the current and proposed emission rates of the relevant pollutants, as well as facility information needed for modeling.

With regards to public participation, Michigan has satisfied the notice and comment requirements for SIP revisions, and has gone beyond them by soliciting comments on multiple drafts of the trading program design, and by holding numerous meetings with a public stakeholder group, consisting of both industry and environmental groups.

The public can participate in the implementation of Michigan's program by reviewing State evaluations of toxics increases, performing their own analyses, and providing these to the state. In cases where a citizen's analysis reveals that the use of credits is violating Michigan's toxics rules, the Department could prohibit the use of the credits. If a citizen's analysis revealed use of invalid credits, the State would require replacement of invalid credits with three times the number of required credits.

The program requires periodic (every three years) program evaluations that assess ''whether the program has caused any localized adverse effects to the public health, safety, or welfare or to the environment.'' Michigan has revised its rules to state that this evaluation shall include ''an analysis of the effects of emission trading on air toxic emissions.'' EPA expects that this analysis will include an assessment of whether use of ERCs is preventing HAP reductions that would otherwise have occurred in communities already overburdened with HAP emissions.

Rule 1217(2) requires MDEQ to prepare a report based on its evaluation, to seek public input on the findings of the report, to provide public notice and comment, and a public hearing. Moreover, the procedures for general program evaluation, included in the SIP, promote input from communities that are potentially most affected by HAP emissions. The general program evaluation procedures state that public hearing on Michigan's Program Evaluation Report ''shall be held in the geographic area which has had the greatest volume of ERCs used in the state during the period covered by the evaluation. Similar education and outreach activities shall also focus on these areas, and the input of Environmental Justice (EJ) organizations shall be sought.'' If the Program Evaluation Report identifies a need for program revisions, then the program will be revised within six months.

Interstate Trading

EPA noted that interstate exchange of credits raises issues that must be addressed, including potential for multiple uses of the same ERC, enforceability of credits generated out of state, and proper accounting of emission shifts in emissions budgets. EPA proposed that Michigan must not allow interstate emissions trading without a Memorandum of Understanding (MOU) with the other relevant state that ''addresses the consistency between key trading rule elements in each State, including: 1. The ERC identification system; 2. Sharing of required Notices and a compatible credit tracking system; 3. Geographic limitations * * * 4. Credit lifetimes and expiration dates; 5. Record retention requirements; 6. The list of acceptable credit generation and use activities; 7. Consistent treatment of credit generation and use protocols; 8. Credit generation base case definitions; and ozone season definition and any other temporal requirements.''

The July 21, 1999 SIP revision makes these changes. The revised rules, however, state that trading of ERCs ''under an emission cap or budget established for a region or as part of a national air pollution control strategy'' will not require an MOU. Thus, an interstate MOU will be required except under a federally-approved program that creates an exemption from the MOU requirement.

Protection of Class I Areas

EPA proposed that to protect Class I areas (pristine environments such as international parks, large national parks, and wilderness areas), provision must be made in Michigan's program to inform Federal Land Managers (FLMs) of credit uses that could affect air quality in Class I areas. EPA proposed that this notification should take place 30 days prior to ERC use activity in, or within 100 km of, a Class I area.

The July 21, 1999 SIP revision includes procedures for reviewing notices of ERC use and notices of emission averaging. These procedures require Michigan staff to determine whether the use or averaging would take place within 100 km of a Class I area, and if so to ''provide immediate notification of the proposed ERC use or emission averaging increases to the FLM,'' and to state ''that any input the FLM would like to provide regarding the proposal will be considered during the review process, where such input is provided within 15 days of notification.'' In most cases, immediate notification would lead to nearly, but not quite, 30 days notice prior to use of credits, since the rules give Michigan 30 days to determine the completeness of notices.

While this response does not meet the 30-day notification requirement proposed by EPA, EPA believes that it provides equivalent opportunity for FLMs to have an impact on trading that may affect Class I areas. Rather than pro-forma notification within 30 days, with no provision for considering FLM comments, Michigan is providing a 15-day opportunity for FLMs to influence whether or not ERC use is allowed to proceed.

Operating Permits

EPA proposed that Michigan must revise its federally required operating permit program to cite the trading rule in order to recognize ERC use as a compliance alternative for permitted sources that are covered by the emissions trading rule. EPA further proposed that before a source with a federally-required operating permit is allowed to use emission averaging or ERCs, its permit must reference the emission averaging and trading rules and contain language allowing averaging or ERCs to be used to demonstrate compliance.

MDEQ responded to these issues by including the following statement in its implementing procedures for ERC use and for emission averaging: ''where ERCs [or emission averaging] are to be used under a Renewable Operating Permit (ROP or title V permit), the reviewer shall coordinate with the permit engineer to ensure that the ROP contains enabling language which provides for ERC use [or emission averaging] as a compliance option under the ROP. * * * Note that the use of ERCs [or emission averaging] under a ROP is only allowed where the ROP rules reference the emission trading program rules, and where the ROP specifically provides for such use.''

With respect to the title V program authority issues, Michigan's rule 213(2) requires that operating permits include limits and standards that ensure compliance with all applicable requirements. Further, Michigan's rule 101(o)(i) defines applicable requirements to include requirements in the Michigan SIP. These provisions allow ROPs to include trading rule requirements for title V sources that choose to participate in Michigan's trading program. However, although MDEQ's title V regulations do generally allow for the incorporation of the trading program provisions into title V permits, MDEQ has committed to revise its operating permit program rules to clearly state that trading program provisions, including averaging and ERC use, can be used as compliance alternatives for SIP provisions to the extent provided by the SIP approved trading rule.

With respect to the title V permit content issues, MDEQ provided only a general commitment to include trading program enabling language in title V permits, and did not address title V permit content requirements in any detail. Under the title V program, the State must ensure that operating permits contain all applicable requirements, including detailed compliance provisions necessary to assure compliance with each applicable requirement.

It is also important to note that the title V program requirements are distinct from any trading rule provisions incorporated under the separate authority of the title I SIP. Thus, title V program requirements, such as permit modification requirements, must not be subsumed, overridden, or otherwise affected by requirements of a discretionary trading program approved into an implementation plan. The trading program provisions applicable to a source become part of the underlying applicable requirements of the source's title V operating permit. Thus, the permit becomes a valuable tool to ensure compliance with the requirements of the trading program. In this way, title V permits help ensure the trading program's integrity. Title V permits provide a mechanism to create detailed, practically enforceable, and often unique requirements and procedures that are critical to implementing the trading program for each subject source.

Trading program provisions that are applicable to a source are included in sources' title V permits in much the same way as all other applicable requirements. If a source's title V operating permit limits—or does not address—participation in a trading program, the source must obtain a formal permit revision prior to participating. If the permit includes terms and conditions necessary to implement the trading program in its title V operating permit, the source may typically exercise these provisions without the need for future formal permit revisions. Relevant notices of use, transfer, and generation must be included in the permit file. However, neither EPA nor state permitting authorities have had extensive experience with trading programs and the incorporation of trading program provisions in title V permits, and few discretionary trading programs have been approved to date. As such, EPA cannot comprehensively address all potential permit revision or content issues that could arise during the implementation of trading program provisions. Therefore, EPA and MDEQ will need to work together to ensure that title V permits contain up-to-date, clear, practically enforceable terms that reflect the requirements of the trading program, while requiring permit revisions only when necessary. Generally, permit content will be largely dictated by the individual trading program provisions being implemented, and whether they address trading, use, generation, averaging, etc. For additional information on title V and trading program interface issues, including permit content, see EPA's draft EIP guidance, which is available electronically at *http://www.epa.gov/ttn/oarpg.*

Michigan's operating permit rules do address the State's trading program in the operational flexibility provisions, which address what types of changes can be made without a permit revision. Specifically, rule 215(2)(b) provides that a person may make any changes allowed by an applicable emissions trading program approved into Michigan's SIP without a revision to the permit, provided (1) the person meets the notification requirements, (2) the changes are not a modification under title I of the Act, and (3) the actual emissions resulting from the changes to do not exceed the emissions allowed under the ROP. EPA notes that the Michigan rule provision combines the 40 CFR part 70 provisions of operational flexibility that address within source trades [40 CFR 70.4(b)(12)] and general economic incentive trading programs that allow trading between sources [40 CFR 70.6(a)(8)].[2] MDEQ has committed to revising its rules to distinguish between these different trading provisions, in accordance with the federal regulations.

Early NO_X Reductions

EPA expressed concern about NO_X ERCs generated under Michigan's trading program through early compliance with the NO_X reduction requirements of the Acid Rain provisions of the Clean Air Act. Under Michigan's program, such credits expire five calendar years ''after the first year of generation, or one calendar year after the effective date of final compliance, whichever occurs first.'' Thus, NO_X ERCs generated through early compliance will expire by January 1, 2002, since affected sources must be in compliance with the requirements for Phase II NO_X reductions under the Acid Rain program by 2000. Given that these ERCs will expire prior to imposition of NO_X reduction requirements in Michigan, EPA stated that its only remaining concern was to assure that other states would be able to determine that these credits had expired, so that sources outside of Michigan could not use these ERCs after January 1, 2002.

Michigan has demonstrated that its electronic registry makes clear when ERCs expire, assuring that other states will be able to determine that these

[2] Note that the term ''emissions allowed under the renewable operating permit'' is defined in Michigan's rule consistent with the 40 CFR 70.2 definition of ''emissions allowable under the permit''. However, this term as used in the federal regulations addresses operational flexibility within a single source [40 CFR 70.4(b) (12)], whereas the Michigan rule broadly applies the concept to interstate or regional trading programs. Although the term as used in part 70 specifically prohibits the use of operational flexibility provisions for within-source trading where the emissions exceed the emissions allowable under the permit, the State rule's broader use of the term can allow for changes provided that the changes meet the requirements of the SIP approved trading program, and the applicable trading program provisions are included in (and therefore allowed by) the operating permit. Also note that the federal economic incentives trading provision [40 CFR 70.6(a)(8)] also requires that any such changes be specifically provided for in the permit.

early NO_X reductions cannot be used after January 1, 2002.

Property Rights

EPA proposed that prior to approval, Michigan must establish that ERCs do not constitute a property right. This protection is necessary to ensure that ERC holders, and courts, understand that ERCs are limited authorizations to emit pollutants that under some circumstances could be revoked.

The July 21, 1999 SIP submission makes this change, by providing a certification by the Attorney General of the State of Michigan, dated June 29, 1999, that ERCs do not constitute a property right.

Transportation Conformity

This issue was not raised in the September 18, 1997 proposal, but is dealt with here because the July 21, 1999 SIP revision makes possible the use of ERCs for conformity purposes. Previously, Michigan's rules stated that ERCs ''shall not be used to comply with federally mandated mobile source requirements.'' The July 21, 1999 SIP revision adds the clause ''except conformity where the emission reduction credits were generated in the conformity area'' (Rule 1204(10).

Michigan's procedures for reviewing notices of ERC generation include provisions to protect against ''double counting'' of mobile source emission reductions in the trading program and in conformity demonstrations. The procedures include checking existing transportation conformity projects to ensure that the emission reductions have not already been used for transportation conformity. In addition, under these procedures the Michigan Department of Environmental Quality will notify the Michigan Department of Transportation that ''the mobile source sector ERC generation proposal may go forward under the emission trading program, and that these emission reductions should not be used for emission reduction credit in any future transportation conformity project.''

Transportation conformity is an appropriate use of ERCs. Michigan's procedures for reviewing notices of generation contain appropriate protections against double counting emission reductions in the trading and conformity programs.

Issues To Be Addressed Before Final Approval

As noted above, EPA will not publish a final approval of Michigan's trading program until Michigan submits several changes or clarifications. Required changes mentioned above are:

- Revised procedures for staff review of notices of generation, incorporating a procedure that for Title V sources staff would find ''incomplete'' any notice of credit generation based on reductions quantified using a technique not specified in the source's Title V permit, as well as any other procedures for review of notices required under the program.
- A confirmation from Michigan that emission reduction credits cannot be generated by reductions that are relied upon by an attainment demonstration, reasonable further progress plan, or maintenance plan.

In addition, Michigan must submit changes to the SIP submittal regarding the use of credits related to best available control technology (BACT) or lowest achievable emission rate (LAER) requirements for new sources, and to clarify the limits to the enforcement relief created by self-reporting provisions. Rule 1204(2)(b) prohibits the use of credits for compliance with BACT or LAER requirements for new sources. However, this provision provides an exception for instances in which the required control technology has been properly installed and is being properly operated and maintained, but the source nonetheless cannot meet the permit limit. The purpose of this provision is to allow sources that have an incorrectly-set BACT or LAER permit limit to remain in compliance with the permit limit until the permit is revised. The September 18, 1997 proposed approval proposed to allow this provision. However, upon further consideration, EPA has determined that there is a possibility that this provision might be used for compliance with BACT or LAER in circumstances other than an incorrectly-set permit limit, and that a preferable way to accommodate sources with incorrectly-set permits is through enforcement discretion. Michigan has agreed to re-submit the SIP, removing from EPA's consideration the sentence in Rule 1204(2)(b) that creates an exception to prohibition on use of credits for BACT or LAER compliance. EPA will not provide final approval until receipt of this change.

Rule 1216(2) allows a source that has generated or used credits that are not ''real, surplus, enforceable, permanent and quantifiable'' to withdraw the credits or, if the credits have been used or traded, to replace the bad credits with good credits. To make use of this reconciliation provision, a source must notify the department within 30 days of discovering that the credits were bad, and must provide the reconciliation and replace the bad credits, if necessary, within 30 days from the date of notice. According to Rule 1216(4), use of this provision can bring a source into compliance with rule 1208(1)(c), which requires that reductions that generate credits must be ''real, surplus, enforceable, permanent and quantifiable.'' The rules do not say, however, that a source that used bad credits for compliance with an emissions limit would be in compliance with that emissions limit as the result of reconciliation. Therefore, EPA's understanding is that this provision does not shield sources that have used bad credits from enforcement for violation of the underlying requirement. Michigan staff have confirmed this interpretation, and have indicated that Michigan will assert this interpretation in a letter to EPA. EPA will not finalize approval until it receives this letter.

How Does EPA Respond to Public Comments on the September 18, 1997 Proposed Approval?

EPA received numerous comments from the public on the September 18, 1997 proposed approval, which we considered in the development of this action. The public comments opposing the proposed action, or raising substantial questions about it, are summarized here, along with EPA's responses.

Comment: The Michigan Department of Environmental Quality commented with ''commitments to complete rule changes and procedural changes to address the approvability issues.''

Response: These changes have been made, and EPA now proposes to approve the program.

Comment: The Coalition to Advance Emission Trading (Coalition) and Michigan requested that EPA propose a direct final action to approve Michigan's SIP revision, as soon as the deficiencies identified in the September 18, 1997 proposed action were corrected. The Coalition would like to expedite approval of Michigan's SIP to provide for the possibility of trading to meet SIP requirements as soon as possible.

Response: While EPA understands the desire to implement emission trading quickly, it believes that, given the complexity of the emissions trading program and of the program revisions made in response to the September 18, 1997 proposed action, the public should have an additional opportunity to comment on EPA's proposed approval of the SIP revision prior to final approval being granted.

Comment: The Coalition argued that EPA should not require Michigan to impose geographic restrictions on trading as a condition of approval, since ''in Michigan, the area most likely to be

the State's most significant non-attainment areas—Detroit—lies downwind of the most likely sources of attainment ERCs—cities like Flint, Lansing, Saginaw and Grand Rapids.'' Thus, the Coalition and Michigan urged EPA to accept ''at the very minimum'' extension of the 100 km and 200 km trading boundaries for VOCs and NO_X to include the boundary of any affected county and to allow contiguous nonattainment or maintenance areas to be combined for trading purposes into a single area. Preferably, trading should be allowed across attainment/maintenance area boundaries state-wide. Moreover, the Coalition ''believes that there is no reason to prohibit trades of non-ozone precursors from attainment to non-attainment areas as well.''

Response: EPA proposes to approve the State's extension of the 100 km and 200 km trading boundaries for VOCs and NO_X to include the boundary of any affected county and to allow combining contiguous nonattainment or maintenance areas for trading purposes into a single area. Under this SIP, VOC trading will be allowed between Detroit and Flint, Lansing or Saginaw (though not Grand Rapids). While emissions of VOC may have some impact on ozone more than 100 km downwind, EPA believes that it is wise to maintain the 100 km boundary, since increasing emissions in the Detroit maintenance area in exchange for emission decreases more than 100 km upwind of Detroit could diminish air quality in the Detroit maintenance area. Similarly, the local impact of emissions of criteria air pollutants makes it unwise to allow long-distance trades of these pollutants that could harm air quality in a nonattainment or maintenance area.

Comment: The Coalition noted that the market has not been flooded with credits created prior to enactment of the trading program.

Response: EPA agrees, and accepts the State's analysis that use of pre-enactment credits does not threaten air quality or the integrity of the program.

Comment: The Coalition commented that credits based on production shutdowns and curtailments are the most permanent and quantifiable of all credits. Michigan's program protects against the load-shifting at commonly-owned sources, and through the requirement that credits must be ''surplus,'' and not relied upon in an attainment demonstration, RFP plan or maintenance plan. Furthermore, the Coalition and Michigan noted that Michigan's attainment plans and maintenance plans do not rely on emissions reductions from activity level reductions, since these plans do not include ''emission reductions resulting from economic downturn.'' The Coalition also objected to the statement in the September 8, 1997 proposed approval that Michigan should seek additional public comment on the use of activity level reductions to generate credit. This has been done; doing so again would serve no purpose.

Response: EPA agrees that credits based on production shutdowns and curtailments are permanent and quantifiable. However, they may not be surplus; despite the requirements in Michigan's rules, the version of the program reviewed in the September 18, 1997 SIP revision contained no means to ensure that such reductions are not relied upon in attainment or maintenance plans, except for the protection against load shifting among sources under common ownership. The fact that Michigan's attainment demonstrations and maintenance plans do not rely on emissions reductions resulting from general economic downturn does not mean that these plans do not rely on production decreases at some sources. Even within a growing economy, some sources cease or reduce production, while other sources start up or increase production. Allowing sources that decrease production to generate credit within an open market program (with no emissions cap) could cause emissions to increase above what they otherwise would be and to compromise attainment or maintenance plans. EPA requested that Michigan obtain additional public comment because of the complexity of this issue, and the potential interest of the public.

Comment: General Motors commented that sources ought to be able to generate emission reduction credits through activity level reductions, to increase industry's ability to respond quickly to market fluctuations, and that Michigan's rules had sufficient protections against load shifting among sources under common ownership or control. For sources not under common ownership or control, General Motors argues that it is impossible to protect against load shifting.

Response: Since it is very difficult to protect against load shifting among sources not under common ownership or control, EPA believes that it was appropriate for Michigan to change its rules to prevent sources in areas that have or need an attainment or maintenance demonstration from using credits generated through activity level reductions. This is the best way to protect the integrity of Michigan's attainment and maintenance plans.

Comment: The Coalition, Michigan and General Motors commented that they are concerned about the requirement that sources must use EPA-approved emissions quantification protocols, where available, or a method that follows EPA protocol development criteria. If such a protocol is inconsistent with current compliance demonstration methods, confusion will result.

Response: EPA believes that most protocols for quantifying ERCs will use the same emission measurement methods as used for other applicable requirements. In those cases where ERC quantification requires different measurement methods, EPA believes that confusion will be manageable.

Comment: The Coalition argues that EPA's draft protocol development criteria are unreasonably long, especially for use by small sources. Moreover, delays in finalizing the protocol guidance documents could delay implementation, and testing procedures to verify some of the emission quantification protocols for mobile sources have not been developed. The Coalition and Michigan commented that Michigan's program had adequate provisions for requiring adequate protocols.

Response: EPA believes that changes Michigan has made to its trading rule provisions dealing with emissions quantification protocol improve the program significantly, and were needed to establish clear standards for judging the validity of emission reductions. Open market trading is a relatively new concept; EPA has drafted, but not finalized, guidance for development of protocols to quantify emission reductions used to generate credit in open market trading programs. EPA believes that it is appropriate for Michigan to require quantification of ERCs using state and federal procedures that might be promulgated in the future. Such a requirement does not delay implementation, and EPA believes that small sources will still be able to generate credits.

Comment: General Motors commented that synthetic minor sources that temporarily violate a synthetic minor permit condition should be allowed to avoid major source status temporarily through the use of emissions reduction credits. The emissions impact of allowing sources to utilize the program in this way is likely to be small. The Coalition and Michigan argue that the provisions of Michigan's program for synthetic minor sources are consistent with federal New Source Review regulations.

Response: EPA encourages emissions trading that provides alternative means of compliance with existing regulatory requirements. However, EPA cannot accept programs that allow sources, even temporarily, to avoid regulatory requirements. To do so would allow trading programs to increase emissions above what they would be in the absence of trading. The earlier version of Michigan's program reviewed in the September 18, 1997 proposal would have allowed sources to use credits to violate conditions in synthetic minor permits designed to ensure that sources do not emit above major sources thresholds, thereby potentially avoiding requirements that otherwise would have applied. In response to EPA's concerns, Michigan removed this provision.

Comment: GM commented that trading for non-ozone precursor emissions should be allowed between attainment and nonattainment areas, ''approved on a case-by-case basis which demonstrates their benefit.''

Response: EPA agrees, and proposes to accept the provisions of Michigan's program that allow use in a nonattainment area of criteria pollutant ERCs generated in ''an adjacent area that contributes to the relevant air quality problem in the proposed use areas.''

Comment: The Air Bank commented that requiring the use of EPA protocol development criteria will impose excessive requirements on small sources. Instead, sources should use EPA-approved protocols where they exist, with Michigan having latitude to review and implement alternative protocols.

Response: EPA believes that it is necessary to apply protocol development criteria to judge the adequacy of protocols that are developed as part of an open market trading system. Without such criteria, sources would have no basis for knowing whether emissions reductions would be considered valid, and it would be difficult to enforce against generators and users of bad credits. Alternative protocols can be implemented through SIP revisions.

Comment: Michigan, the Air Bank and the Coalition commented that interstate trading should be allowed without a Memorandum of Understanding (MOU) between the affected states. MOUs are not required by federal law and do not enhance federal enforceability. States may be reluctant to develop MOUs, and they may be too narrowly written to foster development of a robust market.

Response: MOUs are needed not to enhance federal enforceability, but to ensure state enforceability of interstate trades. MOUs are needed to ensure that states have adequate access to information, and to address consistency between key EIP elements in each of the states that are involved. While it may be time-consuming to negotiate an MOU with other states, states participating in the NO_X cap and trade program will not need to develop MOUs for interstate trading. NO_X is the pollutant most likely to be traded between states.

Comment: The Coalition disagreed that it is necessary for Michigan to outline the procedures that will ensure that NO_X ERCs generated though early compliance with title IV of the Clean Air Act will expire prior to January 1, 2002, and that they will not be utilized in other states. The Coalition points out that Michigan's rules already require such credits to expire, and that Michigan can do nothing beyond that to ensure that such credits are not used in other states.

Response: EPA agrees that Michigan's rules will require NO_X ERCs generated through early compliance with title IV to expire prior to January 1, 2002. Michigan's only responsibility to other states is to ensure that such credits are removed from the trading registry. EPA is now satisfied that Michigan's program accomplishes this removal.

Comment: Michigan and the Coalition objected to the condition that Michigan must require sources that participate in trading ''to disclose all estimated or measured negative effects of trading on emissions of the hazardous air pollutants (HAPs) listed in section 112 of the Act.'' This condition would create requirements in trading programs beyond those in current command and control regulations, and are unnecessary because Michigan's program allows only de minimis increases in HAP emissions. Moreover, the disclosure requirement would create an impediment to emission trading by requiring firms to quantify every increase in HAP emissions (rather than simply verifying that such increases were below allowed levels).

Response: As the Coalition points out, Michigan's program already requires verification that toxic emissions thresholds are not being exceeded. What EPA requires is that the information generated through such verification be made available to the public. Michigan has agreed to make this information available to any citizen who requests it, and to evaluate the overall impact of the trading program on HAP emissions in its publicly available tri-annual review of the program. EPA believes that these extra protections are not onerous, and are needed so that the public can be aware of the impact on localized HAP emissions of the use of ERCs, particularly for compliance with VOC RACT.

Comment: Michigan objected to the proposed requirement that the SIP include a statement that ERCs do not constitute a property right. Unlike trading programs in which credits are government-certified, there is no implication in the Michigan program that credits might constitute a property right, and no ability of sources to demand restitution from the State if credits are canceled. However, Michigan will provide an Attorney General statement to the effect that ERCs do not constitute a property right.

Response: EPA agrees with Michigan's interpretation of this issue, and believes that the Attorney General's statement helps clarify the legal status of ERCs.

Comment: Citizen's Commission for Clean Air in the Lake Michigan Basin (CCCA–LMB) commented that until the rule receives full approval, sources using ERCs for SIP compliance are potentially subject to citizen suits for non-compliance with SIP requirements, and the State of Michigan is potentially subject to citizen suit for non-implementation of the SIP. Moreover, the program raises the possibility of complaints and suits under Title VI of the Civil Rights Act. EPA should communicate that trades under Michigan's trading program are unacceptable and illegal.

Response: EPA believes that Michigan's program will achieve environmental benefits through the retirement of ten percent of all ERCs and by allowing Michigan to require RACT at sources that could not comply with RACT except by using ERCs. While it is true that sources that use Michigan's emissions trading rules for compliance with SIP requirements could be subject to enforcement action, EPA does not wish to discourage environmentally beneficial trades under the program.

Comment: CCCA–LMB comments that proposed approval of Michigan's trading program was inappropriate, given the deficiencies that were identified with the program. Upon correction of the deficiencies, EPA should re-propose its rulemaking action, ''to allow the public a chance to review and comment on the program in appropriate context.''

Response: EPA agrees that the public should have an additional opportunity to comment, given the significance of the changes to Michigan's trading program since publication of the September 18, 1997 proposal. EPA is providing such an opportunity with this action.

Comment: CCCA–LMB commented that the basis for EPA's rulemaking is unclear, and that EPA has declined to review the program against previous guidance.

Response: EPA has used both the 1994 EIP guidance and the 1995 proposed Open Market trading guidance in its evaluation of Michigan's program.

Comment: CCCA–LMB commented that Michigan's program defines ''surplus'' inadequately, and fails to require that ERCs be based on emissions reductions beyond those required in the SIP or presumed in the applicable attainment, progress, or maintenance plans. The regulations fail to ''require either the source or the State to determine if the reductions have been otherwise presumed in the applicable plans.'' Moreover, inadequacies in parts of Michigan's SIP other than the trading program undermine the validity of the open market trading program, since attainment demonstrations predict continued ozone NAAQS violations and rely on overly optimistic emission budget projections. Moreover, several areas in Michigan are in violation of the one and eight hour ozone NAAQS.

Response: Michigan's rules define surplus as emissions reductions made below an established baseline and not required by the SIP, federal implementation plan, attainment demonstration, reasonable further progress plan, or maintenance plan. EPA is requiring a statement from Michigan that the surplus concept applies to all reductions relied upon in applicable plans. Program rules require sources that register ERCs to certify that reductions are surplus. This rulemaking addresses the adequacy of Michigan emissions trading program, and not the other elements of Michigan's SIP. The trading program has environmental benefits and satisfies applicable requirements irrespective of any alleged deficiencies in Michigan's attainment demonstrations.

Comment: CCCA–LMB commented that EPA's proposed action does not ensure compliance with executive orders on environmental justice, and that CCCA–LMB is concerned that the program will lead to increases or foregone reductions in emissions of toxics in industrial minority and low income communities. The State's rulemaking has not provided adequate opportunities for CCCA–LMB and its partners to comment on its concerns regarding environmental justice and the impact of trading on HAP emissions. The East Michigan Environmental Action Council expressed concern that the program could result in the creation of toxic hot spots.

Response: Michigan's program protects against credit uses that would cause significant localized increases in HAP emissions, large enough to cause or exacerbate a violation of a toxic air contaminant health based screening level. Moreover, the program creates incentives for overall reductions in VOCs, reducing the probability of a localized increase in HAPs. These are the program's first line of defense against creating unacceptable concentrations of HAPs, including in minority and low income communities. The program has added a second line of defense: triennial program review to determine the impact of the program on air toxics emissions. EPA expects that the State will take action if this review reveals the program has contributed to the creation of toxic hot spots, or that it has prevented the elimination of a toxic hot spot. The State has satisfied the requirements to provide opportunity for the public to express concerns about the program.

Comment: CCCA–LMB commented that some provisions of Michigan's program lack needed public comment and review. Provisions identified as needing public comment and review include the development of a triennial report evaluating the effectiveness of the program and the ''decision making on adequacy of ERC generation and usage.''

Response: Rule 1217(2) states that Michigan ''shall seek public input on the findings contained in the evaluation report and shall provide for the public notice of the findings, a public comment period on the findings, and an opportunity for a public hearing on the findings contained in the report.'' EPA believes that Michigan's program provides adequate opportunity for public review of the triennial evaluation report. EPA does not believe that public comment and review on the adequacy of each generation or use of ERCs is necessary; in fact, requiring such comment and review would seriously hamper the operation of the program.

Comment: CCCA–LMB commented that EPA should require Michigan to submit detailed audit and reconciliation procedures, rather than the general provisions that require assessment of whether the program is consistent with attainment and maintenance of the NAAQS. For instance, the program's impact on the temporal and spatial assumptions in attainment, progress, and maintenance plans should be evaluated, as stated in the proposed guidance on Open Market Trading Programs.

Response: EPA believes that the general provisions on evaluating the program's consistency with attainment, progress, and maintenance plans, as well as provisions requiring assessing compliance, impact on public health and the environment, achievement of reductions across a spectrum of sources, and the sufficiency of source audits, are adequate. EPA believes that to accomplish such an evaluation, Michigan would need to assess the program's impact on the temporal and spatial assumptions in attainment, progress, and maintenance plans. Michigan should refer to all relevant EPA guidance when developing its program audit report.

Comment: CCCA–LMB commented that inter-sector trading in Michigan's program ''lacks even cursory consideration of appropriate baselines, allocation, enforcement, etc.''

Response: EPA believes that these provisions in Michigan's program are adequate.

Comment: CCCA–LMB requested that EPA disapprove Michigan's program, and that EPA ''issue guidance for review and comment clarifying the appropriate use of such programs before reconsideration of this rule.''

Response: EPA is developing revised guidance on emissions trading programs, but is still obligated under the Clean Air Act to review SIP revisions submitted by the State in a timely manner. EPA believes that Michigan's program is approvable under applicable existing guidance.

Comment: The East Michigan Environmental Action Council (EMEAC) commented that it is troubling that emissions trading treats the right to pollute as a commodity ''which can be monetized and traded.''

Response: Emission trading does not create a right to pollute. Instead the program modifies an existing set of restrictions on allowable emission rates to authorize alternative restrictions that EPA views as collectively more stringent.

Comment: EMEAC objected to the fact that the program will allow older facilities to buy credits in lieu of reducing emissions. EMEAC commented that the program should be restructured to encourage emission reductions from older industrial facilities in urban areas, rather than creation of credits in ''greenfield'' areas which could be ''sold to innercity industries to delay pollution prevention measures indefinitely.''

Response: While Michigan's program will allow some older facilities in urban areas to use emission reduction credits in lieu of reducing emissions, EPA believes that on balance the program creates incentives for emissions reduction in urban areas. New facilities

in ''greenfields'' generally have to be controlled with best available control technology or meet the lowest achievable emission rate. Therefore, such facilities are unlikely to have surplus emissions to reduce. Thus, EPA expects that most credit generation will be in urban areas and other areas with older facilities.

Comment: EMEAC commented that a five-year lifetime for VOC credits ''is unacceptable and undercuts the goal of environmental protection.'' A lifetime of two ozone seasons is more appropriate.

Response: EPA considers a five-year lifetime for VOC credits to be acceptable. The proposed guidance on open market trading would allow an indefinite credit lifetime. Michigan's program discounts older credits by requiring VOC (and NO_X) ERCs used for ozone season compliance to be discounted 10 percent annually until retirement.

Comment: EMEAC commented that the Michigan program lacks ''flow control'' provisions that would prevent credits from being consumed faster than they are created. Absent such provisions, emission spikes could occur, creating an exceedance of the NAAQS.

Response: EPA believes that in a program of this nature, available ERCs are likely to represent a small percentage of the total inventory, reducing the possibility of spiking. Moreover, credit discounts and notice review procedures reduce the probability of emissions spiking. Nonetheless, EPA recognizes that the open market trading creates a potential for emissions spiking. Thus, Michigan is expected to perform an analysis of whether spiking has occurred under the triennial program evaluation provisions requiring assessment of whether the program is consistent with maintenance of the NAAQS.

Comment: EMEAC noted that VOCs differ in their toxicity and reactivity (ozone-forming potential). Yet, Michigan's program would allow trading of VOCs with no consideration of their differing reactivities and inadequate consideration of their differing toxicities.

Response: EPA believes that it is unlikely that VOC trading will have a tendency to increase emissions of highly reactive VOCs; safeguarding against this unlikely possibility would place a significant burden on a trading program. EPA believes that Michigan's program adequately protects against increases in emissions of toxic air contaminants in amounts that could be damaging to the public health.

Comment: EMEAC commented that it might be preferable for Michigan to adopt a ''mandatory'' program with an emissions cap that would assure continued attainment with the NAAQS. Such a program might fit better with interstate trading efforts.

Response: EPA would welcome submission of a cap-and-trade program as part of Michigan's SIP. Moreover, EPA encourages Michigan to participate in the regional NO_X cap-and-trade system. Nevertheless, EPA believes that voluntary programs can be environmentally beneficial.

Comment: EMEAC commented that ''credits should not be used by any facility currently in violation of any rule or permit requirement.''

Response: There is no law, policy or guidance prohibiting emission trading at sources that are in violation of a rule or permit requirement. In fact, requiring sources to purchase ERCs in settlement of enforcement action can be an effective way to discourage violations and to stimulate the market for emission reductions. Michigan's trading program appropriately prohibits generation of credits through reductions made to correct violations.

Comment: The Environmental Defense Fund (EDF) commented that cap and trade programs are superior to open market trading programs, such as Michigan's, and that EPA should not approve ''substandard'' programs that do not guarantee environmental performance as successfully as well-designed cap and trade programs. Cap and trade programs set an overall emissions cap consistent with achievement of air quality objectives, and allow emissions trading under that cap.

Response: EPA agrees that cap and trade programs can be effective means of gaining emissions reductions, while providing flexibility to sources. However, EPA disagrees that open market trading programs are necessarily ''substandard,'' and believes that with inclusion of appropriate protections, they can provide flexibility for sources and maintain or even improve environmental performance.

Comment: EDF commented that EPA should not allow Michigan's program to apply to criteria pollutants other than ozone.

Response: EPA was concerned that trading of criteria pollutants other than ozone under Michigan's program could create attainment or maintenance problems, given the potential for localized ''hot spots'' of these pollutants. Therefore, in the September 18, 1997 proposed action, EPA identified a need for procedures in the SIP that would require modeling analysis to ensure identification of credit uses that might lead to such problems. Michigan has included such procedures in its SIP, and will disallow credit uses when modeling reveals potential problems. Therefore, EPA is satisfied that trading in Michigan for criteria pollutants other than ozone is acceptable and will be environmentally beneficial.

Comment: EDF commented that open market trading programs such as Michigan's fail to create adequate incentives for continual, sustained, credit generation to balance use of previously-generated credits, since they lack emissions caps to drive demand for credits.

Response: The demand for credit generation under open market trading is driven not by emissions caps but by an anticipated market for credits that can be used to comply with existing and future regulations. Thus, if sources use ERCs, it will imply a future market for additional ERCs, creating an incentive for additional credit generation.

Comment: EDF commented that Michigan's trading program would fail to achieve and maintain the NAAQS, and fail to ensure that emissions reductions are surplus. The program's lack of an emissions cap would mean that emissions might exceed those anticipated in an area's emissions budget. Thus, trading would not ensure compliance with the NAAQS. If emissions credits are used in a circumstance in which an emissions budget has been exceeded, the credits are no longer surplus.

Response: Unlike cap and trade programs, open market trading programs are not designed to achieve overall programmatic reductions. Instead, they allow flexibility in complying with existing regulations. While an open market emissions trading program must not interfere with attainment of the NAAQS, the primary responsibility for limiting emissions to ensure that NAAQS and other Clean Air Act requirements are met belongs to the other elements of the SIP, and the State's attainment, progress and maintenance plans. In an open market program, emissions reductions cannot generate credit unless they are surplus to the SIP and attainment, progress, and maintenance plans. If these plans are inadequate, then they, not the trading program, must be corrected. However, Michigan's program does provide additional protections against NAAQS violations and uses of credits that would exceed an attainment or maintenance plan emissions budget; the rules state that credit use may not result in a violation of the NAAQS, PSD increments, maintenance plan, RFP, or

attainment. This provision is backed by procedures (which have been submitted for inclusion in the SIP) that require, for credit uses above de minimis levels, evaluation of whether the proposed use would result in a violation of the NAAQS, attainment progress, or maintenance plans.

Comment: EDF and EMEAC commented that generation of credits based on shutdowns and curtailments should not be allowed. EMEAC expressed a concern that allowing such credits will create an economic incentive for sources to leave existing sites in urban areas and reopen in ''greenfield'' sites, creating urban sprawl.

Response: EPA agrees that it is problematic to allow use of credits based on shutdowns and curtailments under an open market trading program, since use of such credits could compromise attainment and maintenance of the NAAQS. EPA's preferred option, as stated in the September 18, 1997 proposed action, would be to prohibit generation of such credits. However, there is another acceptable option, which Michigan has selected: to allow shutdown and curtailment credits to be generated, but protect against the possibility that use of such credits could compromise attainment or maintenance by prohibiting their use inside an area that has or needs an attainment or maintenance plan. Sources will be able to use such credits in nonattainment or maintenance areas only for offsetting (which is already allowed under the federal new source review program), or if EPA determines that such uses are acceptable. EPA does not believe that the economic gains from generating credits through activity level reductions provide an economic incentive sufficient to promote shutdowns or curtailments that would not otherwise occur.

Comment: EDF objected to the liability scheme in Michigan's trading program, in which credit users are liable for the validity of the credits that they use, even if those credits were generated by another source. EDF commented that ''the agency should re-cast the proposed rule to rely on generator liability with prior certification of emissions reduction credits.'' Detection and punishment of non-compliance are made more difficult by this liability scheme, since assessment of a user source's compliance requires determining not only whether sufficient credits are held to cover emissions, but also determining whether the credits themselves are valid. Determining whether credits are valid will be particularly difficult to make if the credits are years-old. Moreover, the using source may have little incentive to assure the quality of the credits that it uses, since in enforcement cases it could invoke ''good faith reliance'' on representations made by the credit generator.

Response: EPA appreciates EDF's concerns, but believes that the liability scheme in Michigan's rule will be effective. Prior certification of emission reduction credits, as EDF favors, could strain state staff resources, potentially leading to certification of invalid credits. Under Michigan's program, incentives for generators to assure the validity of credits that they register will be provided by state audits of generating sources combined with user source efforts to assess credit validity. EPA believes that the recordkeeping requirements of Michigan's program will help in this assessment, even for credits that are several years old. Moreover, user sources will not be able to invoke ''good faith reliance'' in an enforcement case, given that Rule 1216(1) states that ''notwithstanding another person's liability, negligence, or false representation, a person who owns or operates a source * * * shall be solely responsible to ensure that any affected source * * * under his or her ownership or control is in compliance with all applicable emission standards and limitations.'' Thus, the rules provide that user sources are responsible for the validity of credits that they use.

Comment: EDF commented that the proposed rule would impose liability only for false or deficient certification of credits on generators, while failing to alter the generator's emissions limitation requirements to reflect credit generation.

Response: Rule 1213(6) states that ''the methods used and operational changes made to reduce emissions and the conditions and requirements for emission averaging or the generation of emission reduction credits'' become ''legally enforceable operating requirements'' for the generating source.

Comment: EDF commented that Michigan's program would ''undermine development of comprehensive trading programs and strategies for addressing long-range pollution transport,'' specifically the NO_X budget trading rule for the 22 states, including Michigan. A provision in Michigan's program addressing the interface between the program and potential interstate cap and trade programs is ''inadequate and exposes a fundamental misunderstanding of how emissions trading works.'' Baseline and inter-temporal features of Michigan's program make it incompatible with the 22-state NO_X reduction program.

Response: Michigan's program will not undermine interstate trading programs, including the 22-state NO_X budget program. EPA is implementing this program and will not allow interstate trading to meet NO_X requirements except through the EPA-administered program. Other potential regional programs will define their requirements, either to include or to exclude use of ERCs generated under Michigan's trading program and other trading programs, as appropriate.

When Was Michigan's Program Adopted?

Michigan provided public notification of proposed revisions to the Emission Averaging and Emission Reduction Credit Trading Rules on June, 4, 1998 and held a public hearing on July 8, 1998, with written comment requested on the same day. Michigan's revised Emission Averaging and Emission Reduction Credit Trading Rules were adopted on March 26, 1999, became effective April 13, 1999, and were corrected on April 30, 1999.

When Was Michigan's Program Submitted to EPA and What Did It Include?

Michigan submitted its revised emission trading SIP revision to EPA on July 21, 1999. EPA determined the submittal administratively and technically complete on August 23, 1999.

Michigan's emissions trading program SIP revision included the following elements:

- Part 12 Emission Averaging and Emission Reduction Credit Trading Rules, as amended April 13, 1999 and including changes made pursuant to a notification of obvious correction from Michigan Department of Environmental Quality Office of Regulatory Reform Regulatory Reform Officer to Michigan Legislative Services Bureau Legal Counsel;
- A June 29, 1999 Certification by the Michigan Attorney General that ERCs do not constitute a property right;
- An analysis of ERCs generated prior to the effective date of the original Part 12 Rules (March 16, 1999);
- Notice of ERC Generation (NOG) Review Procedures, including State-Approved NOG Form;
- Notice of ERC Transfer/Trade (NOT) Review Procedures, including State-Approved NOT Form;
- Notice of ERC Use or Retirement (NOU) Review Procedures, including State-Approved NOU Form;

- Notice of Emission Averaging (NOA) Review Procedures, including State-Approved NOA Form; and
- General Program Evaluation Procedures.

Conclusion

EPA is proposing to approve the Michigan SIP revision for ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. This SIP revision implements Michigan's Emission Averaging and Emission Reduction Credit Trading Rules.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed 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 proposed 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.*). Because this rule proposes to approve 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). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will 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), because it 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. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. 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. 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Emission trading, Hydrocarbons, Lead, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671(q).

Dated: January 19, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–3164 Filed 2–6–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH035–1–7161b; A–1–FRL–6942–4]

Approval and Promulgation of Air Quality Implementation Plan; New Hampshire; Discrete Emissions Reductions Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes regulations for an emissions trading program Env–A 3100, Discrete Emissions Reductions Trading Program, which provides a more cost-effective mechanism for sources to meet regulatory requirements for reducing oxides of nitrogen and volatile organic compound emissions. This action is being taken under the Clean Air Act (CAA). Public comments on this document are requested and will be considered before taking final action on this SIP revision.

DATES: Comments must be received on or before March 9, 2001.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, PO Box 85, Concord, New Hampshire 03302–0095.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657, or by electronic mail at *Dahl.Donald@EPA.GOV*.

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes regulations for an emissions trading program Env–A 3100, Discrete Emissions Reductions Trading Program.