

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2007-1043; FRL-8712-9]

**Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove certain revisions to the State of Michigan's prevention of significant deterioration (PSD) State Implementation Plan (SIP), and in the alternative to approve the revisions if the deficiencies in the rules involved are corrected, as proposed by Michigan, and approved by EPA. These revisions are included in Michigan Rule R 336.2816, and set out the mechanisms which facilitate the participation of a potentially affected Federal Land Manager (FLM) in the State's permitting process for purposes of protecting either the increment or the Air Quality-Related Values (AQRVs) associated with a Class I area from potential impacts from a proposed major source or major modification. The Michigan Department of Environmental Quality (MDEQ) submitted these revisions as part of the SIP package on December 21, 2006. In a separate action in today's **Federal Register**, EPA is conditionally approving all other portions of Michigan's PSD SIP revision submission.

**DATES:** Comments must be received on or before October 16, 2008.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1043, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
- *Fax:* (312)886-5824.
- *Mail:* Pamela Blakley, Chief, Air Permits Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2007-1043. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Laura Cossa,

Environmental Engineer, at (312) 886-0661 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Laura Cossa, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0661, [cossa.laura@epa.gov](mailto:cossa.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Is Being Addressed in This Document?
- III. What Are the Changes That EPA Is Proposing To Disapprove and To Approve?
- IV. What Action Is EPA Taking?
- V. Statutory and Executive Order Reviews

**I. What Should I Consider as I Prepare My Comments for EPA?**

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

**II. What Is Being Addressed in This Document?**

MDEQ submitted Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 to R 336.2819 and R 336.2823(1) to (14) ("Part 18") to EPA on December 21, 2006, for EPA approval and inclusion into the Michigan SIP. Part 18 relates to Michigan's PSD permit program. Michigan adopted revisions to Part 18 on December 4, 2006. Prior to approval of Michigan's submitted PSD program, EPA delegated to Michigan

(via delegation letter dated September 26, 1988) the authority to issue PSD permits through the Federal PSD rules at 40 CFR 52.21.

On January 9, 2008, EPA proposed to conditionally approve Michigan's PSD SIP rules under section 110 of the Clean Air Act (CAA). (73 FR 1570, January 9, 2008). During the public comment period, EPA received a number of comments on our proposal. A summary of the comments and our answers are included in a separate action published in today's **Federal Register**, in which EPA is conditionally approving the remainder of the SIP submittal.

Michigan Rule R 336.2816 is based on 40 CFR 51.166(p)(1)–(7), which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification.

EPA has determined that Michigan Rule R 336.2816, as submitted, is not consistent with 40 CFR 51.166(p). Specifically, Michigan Rule R 336.2816(2)(a) does not include the requirements of 40 CFR 51.166(p)(3), under which a plan must provide a mechanism whereby the FLM may present to the state a demonstration of adverse impacts to AQRVs from a proposed source or modification, notwithstanding that the change in air quality resulting from this proposed source or modification would not cause or contribute to an exceedance of the maximum allowable increase for the Class I area. In such cases, where the state concurs with the FLM's demonstration, the State does not issue a permit. Additionally, EPA sought clarification from the State as to how it planned to implement certain State rules corresponding to the variance provisions contained in 40 CFR 51.166(p)(4), (5), and (6).

On November 30, 2007, in a letter from Steven Chester, Director, MDEQ, to the Regional Administrator, Michigan committed, among other things, to making changes to Michigan Rule R 336.2816 consistent with the requirements at 40 CFR 51.166(p). Based on this commitment, EPA proposed to conditionally approve Michigan Rule R 336.2816.

During the comment period, commenters raised concerns that, insofar as Michigan Rule R 336.2816 does not fully implement the regulatory mechanism by which an FLM may participate in the State's permitting process, EPA should act to ensure that the SIP contains these requirements

until such time as the State promulgates consistent regulations.

Because Michigan currently implements the Federal PSD program under EPA's delegation of 40 CFR 52.21, a conditional approval of Michigan Rule R 336.2816 would have made the Michigan SIP less stringent than the currently applicable, Federally delegated program. Therefore, EPA is proposing to disapprove Michigan's submittal as it relates to Michigan Rule R 336.2816. Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and those rules are approved into its SIP. Retention of the delegated program until such time as Michigan promulgates and EPA approves a corrective rule will ensure that the provisions of 40 CFR 51.166(p) will continue to apply, thereby avoiding any regulatory gap, and ensuring full participation of the FLM, as appropriate, in State permitting decisions.

In the alternative, EPA is proposing to approve Michigan's revised Michigan Rule R 336.2816 if the rule is revised to meet the requirements set forth in Federal rule 40 CFR 51.166(p). In its letter to EPA dated November 30, 2007, Michigan has committed to make this revision to its rule.

Michigan is not authorized to carry out its Federally approved air program in "Indian Country," as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, EPA retains the authority to implement and administer the CAA program in Indian Country.

### III. What Are the Changes That EPA Is Proposing To Disapprove and To Approve?

EPA is proposing to disapprove the following section of "Part 18, Prevention of Significant Deterioration of Air Quality" of Michigan's Air Pollution Control Rules: "R 336.2816, Sources Impacting Federal Class I Areas—additional requirements." In the alternative, EPA is proposing to approve this same section of Michigan's Rule R 336.2816, if the rule is revised to meet the requirements set forth in Federal rule 40 CFR 51.166(p), as Michigan has committed to do in its letter to EPA dated November 30, 2007.

### IV. What Action Is EPA Taking?

For reasons stated above, EPA is proposing to disapprove certain revisions to Michigan's SIP, specifically Michigan Rule R 336.2816, Sources Impacting Federal Class I Areas; additional requirements. EPA is, in the alternative, proposing to approve Michigan Rule R 336.2816 when the rule is revised to meet the requirements set forth in Federal rule 40 CFR 51.166(p), as Michigan has committed to do in its letter to EPA dated November 30, 2007.

#### *What Is the Effect of the Proposed Disapproval?*

Under section 110(k)(3) of the CAA, EPA may fully approve or disapprove a State submittal. Where portions of the State submittal are separable, EPA may approve portions of the submittal that meet the requirements of the CAA, and disapprove the portions of the submittal that do not meet the requirements of the CAA. (57 FR 13566, April 16, 1992.) Elsewhere in today's **Federal Register**, EPA is conditionally approving the remaining elements of the State's December 21, 2006 submittal. Under today's proposed disapproval, Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) to administer Michigan Rule R 336.2816 until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and these rules are approved into its SIP.

#### *What Is Our Basis for Proposed Disapproval of Michigan's Rules?*

The State's current Michigan Rule R 336.2816 is not consistent with 40 CFR 51.166(p), which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification.

#### *What Is Our Basis for Proposed Approval of Michigan's Rules?*

The State has committed to revise current Michigan Rule R 336.2816, which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification, by promulgating rules equivalent to 40 CFR 51.166(p). The State has formalized this commitment in a letter to EPA dated November 30, 2007. EPA has reviewed the State's proposed regulatory changes and has

made a preliminary determination that they are consistent with 40 CFR 51.166(p). Once properly promulgated by the State, EPA proposes to approve them into the State's SIP. A copy of the proposed revised rules can be seen at <http://www.regulations.gov> (add the docket number EPA-R05-OAR-2007-1043 to Advanced Docket Search option). If Michigan submits these revised rules to EPA for final approval, EPA plans to finalize the approval without an additional comment period. Any party interested in commenting on whether Michigan's proposed revision to Michigan Rule R 336.2816 meets the requirements of 40 CFR 51.166(p) should do so during the comment period on this action.

## V. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

### *Paperwork Reduction Act*

This proposed 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.*).

### *Regulatory Flexibility Act*

This proposed action merely proposes to approve 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.*).

### *Unfunded Mandates Reform Act*

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).

### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Nevertheless, EPA anticipates providing outreach to tribes located in Michigan and other potentially affected areas regarding this proposed rulemaking.

### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes approval of a state rule implementing a Federal standard.

### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP

submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

## List of Subjects in 40 CFR Part 52

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

Dated: August 25, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

[FR Doc. E8-21620 Filed 9-15-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2007-0603; FRL-8713-7]

### Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the New Orleans Ozone Maintenance Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve this revision to the Louisiana State Implementation Plan (SIP) concerning the maintenance plan addressing the 1997 8-hour ozone standard for the New Orleans Ozone Maintenance Area. On June 29, 2007, the State of Louisiana submitted a maintenance plan for the New Orleans Ozone Maintenance Area, which includes the parishes of Jefferson, Orleans, St. Bernard and St. Charles, which ensures continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. This maintenance plan meets the statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the Federal Clean Air Act (CAA). On March 12, 2008, EPA issued a revised ozone standard. Today's action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the New Orleans area under the 2008