

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

Subject to Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action, in conjunction with the FIP promulgation, may have tribal implications. For example, although the FIP does not apply to sources in Indian country, controls and emission reductions arising from the program may affect Indian country or other tribal interests. However, the regulations arising under that action, and the SIP disapproval being addressed here, will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

EPA initiated consultation with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA sent an invitation to consult to each Region 5 Tribe on August 15, 2012, along with a copy of the proposed taconite FIP **Federal Register** notice. Conference calls were held on the taconite FIP proposal on August 22, 2012 and September 12, 2012 to provide all Region 5 Tribes with more information on the proposed rulemaking and an opportunity to ask questions of EPA technical staff and request formal individual consultation if desired. Four Region 5 Tribes participated in the August 22, 2012 call. Two Region 5 Tribes participated in the September 12, 2012 discussion. One Region 5 Tribe provided verbal testimony at the public hearing held on the proposed taconite FIP rulemaking on August 29, 2012. One Region 5 Tribal Chair expressed appreciation for the consultation discussions held with the Tribes and gratitude for EPA's careful consideration of the regional haze situation in northeast Minnesota.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885,

April 23, 1997), because it solicits comment on a proposal to disapprove a state rule.

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

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

*National Technology Transfer Advancement Act*

In reviewing state 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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.

*Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain state requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not

provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 11, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2010-0566; FRL-9776-9]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the State of Michigan's New Source Review (NSR) State Implementation Plan (SIP) including their revised Part 2 NSR permitting rules, and the addition of their Part 19 rules revising Michigan's NSR rules for major sources in nonattainment areas to include the Federal NSR reform rules, and other revisions that are affected by the Federal NSR rules. The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on March 24, 2009.

**DATES:** Comments must be received on or before March 8, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-0566, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: damico.genevieve@epa.gov.
3. *Fax*: (312) 886-0968.
4. *Mail*: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (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-2010-0566. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email 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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from

8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Constantine Blathras, Environmental Engineer, at (312) 886-0671 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, [Blathras.constantine@epa.gov](mailto:Blathras.constantine@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 action is EPA taking?
- III. Statutory and Executive Order Reviews

#### **I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

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 action is EPA taking?**

EPA is proposing to approve the following Michigan air pollution control rules as a revision to its SIP. On March 24, 2009, Michigan submitted the following rule revision packages to EPA for approval: (1) Part 1, general provisions. Revisions include amendments to R336.1102 to R336.1105 (including R336.1103 and R.336.1104) (definitions; B, C, D, E), R336.1109

(definitions, I), R336.1112 to R336.1114 (including R226.1113) (definitions; L, M, N), and R336.1122 (definitions; V). These revisions were made to modify the definitions that impact the new NSR permitting rules in Part 19 as well as modify the definition of volatile organic compound. (2) Part 2, Air Use Approval. Revisions include amendments to R36.1201 (Permits to install), R336.1202 (Waivers of approval), R336.1205 (Permit to install; approval), R336.1207 (Denial of permits to install), R336.1219 (Amendments for change of ownership or operational control), R336.1240 (Required air quality models), R336.1241 (Air quality modeling demonstration requirements), R336.1278 (Exclusion from exemption), R.336.1281 (Permit to install exemptions; cleaning, washing, and drying equipment), R336.1284 (Permit to install exemption; containers), R336.1285 (Permit to install exemptions; miscellaneous), R336.1288 (Permit to install exemptions; oil and gas processing equipment), and R336.1299 (Adoption of standards by reference). In addition, all relevant citations in the Part 2 rules have been changed to reflect Michigan's new permitting authority in the new Part 18 and 19 rules. (3) For Part 19, NSR for Major Sources Impacting Nonattainment Areas, these revisions include R336.2901 (Definitions), R336.2901a (Adoption by reference), R336.2902 (Applicability), R336.2903 (Additional permit requirements for sources impacting nonattainment areas), R336.2907 (Actuals plantwide applicability limits or PALs), and R336.2908 (Conditions for approval of a major new source review permit in a nonattainment area).

EPA has reviewed the rules MDEQ submitted on March 24, 2009, against the Federal nonattainment air quality permitting regulations found in 40 CFR 51.165(a) and (b). EPA has found that the rules as submitted by Michigan for revision into its SIP are at least as stringent as these Federal rules. The Federal rules found at § 51.165(a) and (b) specify the elements of an approvable State permit program for preconstruction review for nonattainment purposes under part D of the Clean Air Act. A major source or major modification that would be located in an area designated as nonattainment and subject to the nonattainment area permit must meet stringent conditions designed to ensure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions will be obtained from existing sources; and that

there will be progress toward achieving the National Ambient Air Quality Standards.

### III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

Dated: January 24, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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