

This notice is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the CAIR will further improve air quality and children's health.

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

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

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995, Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The National Technology Transfer Advancement Act of 1995 directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's notice does not involve technical standards. Therefore, the National Technology Transfer and Advancement Act of 1995 does not apply.

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

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance,<sup>17</sup> agencies are to assess whether minority or low-income populations face risks or a rate of

exposure to hazards that are significant and that "appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group." (EPA, 1998).

In accordance with Executive Order 12898, the Agency has considered whether the CAIR may have disproportionate negative impacts on minority or low income populations. The EPA expects the CAIR to lead to reductions in air pollution and exposures generally. Therefore, EPA concluded that negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected. For the same reasons, EPA is drawing the same conclusion for today's notice to reconsider a certain aspect of the CAIR.

**List of Subjects**

*40 CFR Part 51*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

*40 CFR Part 96*

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 22, 2005.

**Stephen L. Johnson,**

*Administrator.*

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2004-MI-0001; FRL-8016-4]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to partially approve and partially disapprove revisions to the Michigan State Implementation Plan (SIP). These revisions were submitted to the EPA by the Michigan Department of Environmental Quality (MDEQ) on April 3, 2003, May 28, 2003, September 17, 2004, October 25, 2004 and June 8,

2005. The following sections of Michigan's rules are affected: Part 3: Emission Limitations and Prohibitions—Particulate Matter; Part 4: Emission Limitations and Prohibitions—Sulfur-bearing Compounds; Part 6: Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions; Part 7: Emission Limitations and Prohibitions—New Sources of Volatile Organic Compound Emissions; Part 9: Emission Limitations and Prohibitions—Miscellaneous; Part 10: Intermittent Testing and Sampling; and Part 11: Continuous Emission Monitoring. The revisions are primarily administrative changes and minor corrections.

**DATES:** Comments must be received on or before January 30, 2006.

**ADDRESSES:** Submit comments, identified by Docket ID No. EPA-R05-OAR-2004-MI-0001, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

- *Fax:* (312) 886-5824.

- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's 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-2004-MI-0001. 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

<sup>17</sup> U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

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 electronic 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 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 legal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@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 Has Michigan Submitted?
- III. Did Michigan Hold a Public Hearing?
- IV. What Is EPA's Evaluation of the State Submittal?
- V. What Actions Is EPA Taking?
- VI. Statutory and Executive Order Reviews

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

### A. Submitting CBI

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

### B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. What Has Michigan Submitted?

On April 3, 2003, May 28, 2003, September 17, 2004, October 25, 2004, and June 8, 2005 the Michigan Department of Environmental Quality (MDEQ) submitted revisions to the Michigan State Implementation Plan (SIP). These submissions revise the following sections of Michigan's Air Pollution Control Rules: R 336.1301, R 336.1303, R 336.1330, R 336.1331 except item C8 of Table 31, R 336.1358, R 336.1361, R 336.1362, R 336.1363, R 336.1371, R 336.1372, R 336.1374, R 336.1401, R 336.1403, R 336.1601, R 336.1602, R 336.1604 to R 336.1608, R 336.1615 to R 336.1619, R 336.1622, R 336.1623, R 336.1625, R 336.1627 to R

336.1631, R 336.1702, R 336.1705, R 336.1906, R 336.1911, R 336.1930, R 336.2001 to R 336.2005, R 336.2007, R 336.2011 to R 336.2014, R 336.2021, R 336.2040 except subrules (9) and (10), R 336.2041, R 336.2101, R 336.2150, R 336.2155, R 336.2159, R 336.2170, R 336.2175, R 336.2189, and R 336.2190. The revisions are primarily administrative changes and minor corrections.

## III. Did Michigan Hold a Public Hearing?

Michigan held public hearings on February 2, 2000, October 17, 2001 and December 2, 2004. No negative comments were submitted on the rule revisions.

## IV. What Is EPA's Evaluation of the State Submittal?

The following is a brief summary of the revisions and EPA's evaluation of them.

### Part 3: Emission Limitations and Prohibitions—Particulate Matter

R 336.1301, 1303, 1330, 1331 except C8 of Table 31, 1371, 1372, and 1374—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.1358, R 336.1361, R 336.1362, R 336.1363—The MDEQ corrected a subsection reference in each of these rules. Reference test method 9 was said to be described in R 336.2004(1)(h) when the correct section was R 336.2004(1)(l). R 336.2004(h) describes test method 4. The corrections are approvable.

### Part 4: Emission Limitations and Prohibitions—Sulfur-bearing Compounds

R 336.1401 and 1403—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

### Part 6: Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions

R 336.1601—The MDEQ changed terminology from "commission" to "department." The revision is approvable.

R 336.1602—Section 336.1602(2) requires department approvals of equivalent emission rates, alternate emission rates, and compliance methods referenced in the section to be submitted to EPA as a SIP revision. The MDEQ changed references to rule R 336.1610 contained in this section to make them consistent with the version

of rule R 336.1610 currently applicable at the state level. The revisions to R 336.1610 have not been approved into the SIP and are not currently before EPA for review.<sup>1</sup> Therefore, by revising the references to rule R 336.1610, the references applicable to the SIP approved version of rule R 336.1610 would be eliminated. Approval of the revision to R 336.1602 would relax RACT in the current SIP approved version of R 336.1610 by eliminating the reference requiring alternate methods to be submitted to EPA as a SIP revision. This would effectively allow the State to alter the SIP without EPA review and approval (director's discretion). This is inconsistent with the requirements of the CAA and with RACT requirements as set forth in EPA policy guidance documents, including "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" dated May 25, 1988. The revisions to this rule are not approvable.

R 336.1604 to 1608 and 1615 to 1618—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.1619 and 1622—The MDEQ made minor administrative changes, e.g., updating the date of the CFR reference, updating the cost of ordering printed materials. The revisions are approvable.

R 336.1623 and 1627—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.1625—The MDEQ revised the rule to read as follows: "A person who is responsible for the operation of a synthesized pharmaceutical process subject to the provisions of this rule shall obtain current information and maintain records that are necessary for a determination of compliance with the provisions of this rule." This language is consistent with RACT requirements for synthesized pharmaceutical manufacturing contained in the control technology guideline and expressed in EPA's model VOC RACT rules. See Memorandum dated June 24, 1992, from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, entitled "Volatile Organic Compounds (VOC) Rules for Reasonably Available Control

Technology (RACT)." The MDEQ added the requirement to keep "continuous records of the gas temperature of each condenser or of a parameter that insures proper operation of an equivalent control device used pursuant to subrule (2)(B) of this rule." The MDEQ also made minor administrative changes, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.1628—The MDEQ made minor administrative changes, e.g., updating the date of the CFR reference, updating the cost of ordering printed materials. The revisions are approvable.

R 336.1629—The MDEQ made minor administrative changes, e.g., noting where in Michigan's rules American Society for Testing and Materials (ASTM) methods are adopted by reference. The revisions are approvable.

R 336.1630—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.1631—The MDEQ made minor administrative revisions; e.g., changing terminology from "commission" to "department" and updating the name of a regulated company. The revisions are approvable.

*Part 7: Emission Limitations and Prohibitions—New Sources of Volatile Organic Compound Emissions*

R 336.1702 and 1705—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

*Part 9: Emission Limitations and Prohibitions—Miscellaneous*

R 336.1906, 1911 and 1930—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

*Part 10: Intermittent Testing and Sampling*

R 336.2001 to 2003—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.2004—The MDEQ made minor administrative changes, e.g., updating the date of the CFR reference, updating the cost of ordering printed materials. The revisions are approvable.

R 336.2005—The MDEQ changed terminology from "commission" to "department." The revision is approvable.

R 336.2007—The MDEQ included two schematic figures that were

inadvertently omitted in earlier versions of the rule. The revisions are approvable.

R 336.2011—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The State also corrected an error in the nomenclature for the calculations. Specifically, the equation defining  $C_s$  was corrected to read " $C_s$  = Concentration of particulate matter in stack gas, pounds per 1,000 pounds of actual stack gas." The revisions are approvable.

R 336.2012 to 2014—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.2021—The MDEQ removed figures 101 and 105. Rule 336.2010, the only rule referring to these figures, was rescinded by the state and removed from the SIP. These revisions are approvable.

R 336.2040—The MDEQ made minor administrative revisions, e.g., changing terminology from "commission" to "department." The revisions are approvable.

R 336.2041—There are multiple problems with this rule. The MDEQ added language to subrule (1) that allows the State to alter the SIP without submitting these changes to EPA for approval. This is inconsistent with the CAA and with RACT requirements as set forth in EPA policy guidance documents, including "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" dated May 25, 1988. The MDEQ also changed references to rule R 336.1610 to reflect revisions to that rule. However, as discussed above, the revisions to R 336.1610 have not been approved into the SIP and are not approvable because they would relax RACT requirements. Also, the rewording of several subparts is confusing. This rule is not approvable.

*Part 11: Continuous Emission Monitoring*

R 336.2101—The MDEQ made minor administrative revisions, e.g., changing "commission" to "department." The revisions are approvable.

R 336.2150—The MDEQ updated CFR citations from 1983 to 2000 and made minor administrative revisions, e.g., changing terminology from "department of natural resources" to "department of environmental quality." The revisions are approvable.

R 336.2155—The MDEQ changed terminology from "commission" to

<sup>1</sup> It should be noted that the revisions would not be approvable because they would relax the Reasonably Available Control Technology (RACT) level of controls on Volatile Organic Compounds (VOC) required by the Clean Air Act (CAA). See Sections 182(a)(2)(A) and 182(b)(2).

“department.” The revision is approvable.

R 336.2159—The MDEQ made minor administrative revisions, e.g., changing terminology from “commission” to “department.” The revisions are approvable.

R 336.2170—The MDEQ made minor administrative revisions, e.g., changing terminology from “commission” to “department.” The revisions are approvable.

R 336.2175—The MDEQ made minor administrative revisions, e.g., changing terminology from “commission” to “department.” The revisions are approvable.

R 336.2189—The MDEQ made minor administrative revisions, e.g., changing terminology from “commission” to “department.” The revisions are approvable.

R 336.2190—The MDEQ changed terminology from “commission” to “department.” The revision is approvable.

#### V. What Actions Is EPA Taking?

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA, EPA regulations and the EPA’s interpretation of these requirements as expressed in EPA policy guidance documents. Rules R 336.1602 and R 336.2041 are inconsistent with the CAA and the applicable policies by which EPA must evaluate submittals, including, “Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**” dated May 25, 1988. Therefore, EPA is proposing to disapprove rules R 336.1602 and R 336.2041. EPA is proposing to approve the remainder of the rules.

#### VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget.

##### *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 Clean Air Act.

##### *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).

##### *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 is not economically significant.

##### *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*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 9, 2005.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. E5-8036 Filed 12-28-05; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 63**

[OAR-2003-0138, FRL-8017-4]

RIN 2060-AM77

##### **National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)**

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

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** On November 14, 2005, at 70 FR 69210, EPA proposed amendments to the “National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (Non-Gasoline)”