

Pursuant to its authority at 40 CFR 70.10(b), EPA published an NOD for Michigan's title V operating permit program on December 11, 2001 (66 FR 64038). The NOD was based upon EPA's finding that Michigan's regulation granting a permit shield for certain administrative permit amendments did not meet federal requirements for program approval. On May 7, 2003 and May 21, 2003, Michigan submitted to EPA a revision to its title V program correcting this program deficiency. As discussed in detail below, EPA is proposing to approve Michigan's title V program revision. Final approval of this program revision will resolve the NOD.

II. What Is the Program Revision That EPA Is Proposing To Approve?

Michigan is in the final stages of revising its title V permit modification rule, R 336.1216, to remove the permit shield provision for certain types of administrative permit amendments. Although Michigan's rule revision is not yet final, the State's May 7, 2003 submittal included the draft rule that is awaiting review by Michigan's Joint Legislative Committee on Administrative Rules. The public comment period on the draft rule ended on November 6, 2002, and Michigan did not receive any adverse comment on the administrative amendment rule revision. Michigan expects that the rule will be finalized in the summer of 2003, at which time the State will submit the final rule to EPA.

Michigan's draft administrative permit amendment rule is consistent with 40 CFR 70.7(d)(4), which does not allow a permit shield for the types of changes described below. The permit shield provisions at 40 CFR 70.6(f) offer enforcement protection in certain prescribed situations. Michigan's draft revised R 336.1216(1)(b)(iv) states: "The permit shield provided under R 336.1213(6) does not extend to administrative amendments made pursuant to subdivision (a)(i) to (iv) of this subrule." R 336.1216(1)(a)(i) through (iv) allow administrative amendments for the following types of changes: a change that corrects typographical errors; a change in the name, address or phone number of the responsible official or other contact person; a change that provides for more frequent monitoring and reporting; and a change in the ownership or operational control of a source where no other changes to the permit are necessary. These types of administrative permit amendments are the same as those specified in the federal rules at 40 CFR 70.7(d)(1)(i)–(iv).

In addition, draft R 336.1216 includes other minor changes to the State permit modification rule, including changes to the citation method for Michigan laws, and a clarification to R 336.1216(1)(b)(iii) regarding the implementation of administrative permit amendment changes made pursuant to R 336.1216(1)(a)(i) through (iv). This clarification is consistent with 40 CFR 70.7(d)(3)(iii) and 70.7(e)(2)(v).

III. What Is Involved in This Proposed Action?

The EPA is proposing to approve revisions to R 336.1216 of Michigan's title V operating permit program at the same time that Michigan is processing the State's rule revision. Michigan's draft regulation R 336.1216(1)(b)(iv) is now consistent with 40 CFR 70.7(d)(4). The EPA will finalize its approval of Michigan's program revision if Michigan promulgates and submits a final rule that is identical in substance to the draft rule it is processing. Upon final EPA approval, Michigan's program revision will resolve the program deficiency identified in EPA's NOD, published on December 11, 2001 (66 FR 64038).

Section 502(i)(2) of the Act and 40 CFR 70.10(b)(3) provide that, if a state has not corrected a deficiency within 18 months after the effective date of an NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. The sanctions set forth in section 179(b) include a prohibition on highway funding and an increase in the emission offset requirements under part D of title I of the Act. Michigan's 18 month sanctions clock expired on May 30, 2003. However, EPA interprets section 179(a) to mean that section 179(b) sanctions shall not apply until EPA selects the order in which sanctions shall apply through notice-and-comment rulemaking. This interpretation follows the interpretation of section 179(a) set forth in the title I sanctions rule, which selects the order of sanctions following certain State Implementation Plan findings under section 179(a). See EPA's proposed title I sanctions rule, 58 FR 51270, 51272 (October 1, 1993); see also EPA's final title I sanctions rule, 59 FR 39832, 39857 (August 4, 1994). The EPA has not yet promulgated the title V order of sanctions rulemaking, and thus no sanctions go into effect at this time.¹

Consistent with EPA's final full approval of Michigan's title V program (66 FR 62951), this proposed approval

¹ As noted in the NOD, EPA is in the process of developing the title V order of sanctions rule.

does not extend to sources in Indian Country, as defined in 18 United States Code 1151.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866, "Regulatory Planning and Review" (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.

Executive Order 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, 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).

Regulatory Flexibility Act

This 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 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 action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does