

coordinating the temporary lodging program at the VA health care facility of jurisdiction is responsible for making decisions under this part.

(Authority: 38 U.S.C. 501, 1708)

§ 60.10 Costs.

Costs for temporary lodging under this part shall be borne by VA.

(Authority: 38 U.S.C. 501, 1708)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI80-01-7289a, FRL-7442-9]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Excess Emissions During Startup, Shutdown or Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving several rule revisions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions.

DATES: This rule is effective on April 25, 2003, unless EPA receives adverse written comments by March 26, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental

Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767.

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I. What Did Michigan Submit?

On September 23, 2002, the MDEQ submitted a revision to its SIP containing rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions. MDEQ submitted the following rules:

- R 336.1102 Definitions; B
- R 336.1104 Definitions; D
- R 336.1105 Definitions; E
- R 336.1107 Definitions; G
- R 336.1108 Definitions; H
- R 336.1113 Definitions; M
- R 336.1118 Definitions; R
- R 336.1120 Definitions; T
- R 336.1915 Enforcement discretion in instances of excess emissions resulting from malfunction, start-up or shutdown.
- R 336.1916 Affirmative defense for excess emissions during start-up or shutdown.

II. What Action Is EPA Taking?

EPA is approving all of these rules for incorporation into Michigan's SIP.

III. What Criteria Is EPA Using in Reviewing the State's Submission?

In determining the approvability of a rule for incorporation into a state SIP, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (Act), EPA regulations and the EPA's interpretation of these requirements as expressed in EPA policy documents. The EPA's policy on excess emissions occurring during startup, shutdown or malfunction is set forth in the following documents: a memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;" EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M.

Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown;" and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977).

The policy documents referenced above note that, because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation. Nevertheless, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. With respect to startup and shutdown of process equipment, EPA also recognizes that this is part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will, in most cases, eliminate violations of emission limitations during such periods. However, EPA acknowledges that for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided.

One way of addressing these situations is through an "enforcement discretion" approach. In this type of approach, a state or EPA can refrain from taking an enforcement action if appropriate criteria are met. A second way of addressing excess emissions occurring during startup and shutdown periods is through an "affirmative defense" approach. Under this approach, a SIP provision would, in the context of an enforcement action for excess emissions, excuse a source from penalties if the source can demonstrate that it meets certain objective criteria (an "affirmative defense"). See EPA's September 20, 1999 policy memorandum. Michigan's rules contain both enforcement discretion and affirmative defense provisions.