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)

[FR Doc. 03–4204 Filed 2–21–03; 8:45 am]

BILLING CODE 8320–01–P

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.

SUPPLEMENTARY INFORMATION:

Table of Contents

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.

IV. Are Michigan's Rules Consistent With the Clean Air Act?

We have reviewed Michigan's submittal. For the reasons discussed below, we have found it to be consistent with the requirements of the Act, as set forth in the applicable EPA policy documents and rules. Therefore, we are approving Michigan's rule revisions for incorporation into the State's SIP.

Definitions

R 336.1102(a), R 336.1104(e), R 336.1107(g), R 336.1108(c), R 336.1118(f) and R 336.1120(i) contain minor administrative revisions, *e.g.* replacing commission with department. All of these revisions are acceptable.

R 336.1105(f) was revised to define ''excess emissions'' as ''emissions of an air contaminant in excess of any applicable emission limitation.'' R 336.1113(d) was revised to read as follows:

''Malfunction'' means any sudden, infrequent and not reasonably preventable failure of a source, process, process equipment, or air pollution control equipment to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

These definitions are consistent with the EPA policy documents listed above which pertain to excess emissions occurring during startup, shutdown and malfunctions.

Rules R 336.1915 and R 336.1916 address excess emissions occurring during startup, shutdown or malfunction. Rule R 336.1915 contains Michigan's procedure for utilizing enforcement discretion for excess emissions resulting from malfunction, startup or shutdown.

Enforcement Discretion Approach

EPA's February 15, 1983, policy sets forth the criteria that should be considered in determining whether enforcement discretion should be exercised in cases of malfunction. The criteria are listed below, as are the sections of Michigan's rule which address the criteria:

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions. (336.1915(3)(b))

2. Repairs were made in an expeditious fashion when the operator knew or should have know that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable. (336.1915(3)(d))

3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions. (336.1915(3)(e))

4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality. (336.1915(3)(f))

5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance. (336.1915(3)(g))

In addition, Michigan's rule requires the following:

1. The excess emissions must be the result of a sudden and unavoidable breakdown of process or control equipment, beyond the reasonable control of the person operating the facility;

2. The excess emissions caused by a bypass of control equipment were unavoidable to prevent loss of life, personal injury, or severe property damage;

3. The malfunction was an infrequent event and was not reasonably preventable;

4. All emission monitoring systems were kept in operation if at all possible;

5. The source has a malfunction abatement plan as set forth in Michigan's rules;

6. The excess emissions were reported to MDEQ as specified in their rules and, if requested by the MDEQ, the source must submit a written report that includes known causes, corrective actions taken, and preventive measures to be taken to minimize or eliminate the chance of recurrence;

7. The actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence; and

8. Any information submitted to MDEQ under the rule must be properly certified.

All of these provisions are appropriate and consistent with the EPA policy documents listed above.

For excess emissions occurring during startup or shutdown of process equipment, EPA's February 15, 1983, policy requires that the excess emissions occur infrequently, over a short period; that the excess could not have been prevented through careful planning and design; and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage. Michigan includes these requirements under section 336.1915(4). In addition, sources must meet requirements comparable to those detailed above for malfunctions. All of these provisions are appropriate and consistent with the EPA policy documents listed above.

It should be noted that Michigan's rule clearly states that emission units subject to section 111 or 112 of the Act are subject to the startup, shutdown, or malfunction provisions contained in section 111 or 112. The rule also emphasizes that nothing in the rule limits the authority of MDEQ to seek injunctive relief.

Affirmative Defense Approach

Rule R 336.1916 contains Michigan's affirmative defense provisions for excess emissions resulting from startup or shutdown. As stated in EPA's September 20, 1999, policy memorandum, an acceptable affirmative defense provision may only apply to actions for penalties, but not to actions for injunctive relief. This restriction insures that State and Federal authorities remain able to protect air quality standards and PSD increments. Michigan's rule contains these restrictions in R 336.1916(1) and (4). Furthermore, the affirmative defense approach is appropriate only when the respective contributions of individual sources to pollutant concentrations in ambient air are such that no single source or small group of sources has the potential to cause an exceedance of the NAAQS or PSD increments. Michigan addresses this requirement in R 336.1916(2).

In addition, for periods of excess emissions arising during startup and shutdown, EPA's September 20, 1999, policy sets forth criteria which are part of the defendant's burden of proof. The criteria are listed below as are the sections of Michigan's rule which address the criteria:

1. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design. (336.1916(1)(a))

2. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance. (336.1916(1)(b))

3. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. (336.1916(1)(c))

4. At all times, the facility was operated in a manner consistent with good practice for minimizing emissions. (336.1916(1)(d))

5. The frequency and duration of operation in startup or shutdown mode

was minimized to the maximum extent practicable. (336.1916(1)(e))

6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality. (336.1916(1)(f))

7. All emission monitoring systems were kept in operation if at all possible. (336.1916(1)(g))

8. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence. (336.1916(1)(h) and (j))

9. The Owner or operator properly and promptly notified the appropriate regulatory authority. (336.1916(1)(i))

Both EPA policy and Michigan's rule note that if excess emissions occur during routine startup or shutdown periods due to a malfunction, then those instances should be treated as other malfunctions.

V. Is This Action Final, or May I Still Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by March 26, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on April 25, 2003.

VI. What Statutory and Executive Order Reviews Did EPA Conduct?

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. 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). 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.*). Because this rule 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 any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This 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). This action also does not have federalism implications because it will 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, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. 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 is not a significant regulatory action under Executive Order 12866.

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 SIP 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 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 SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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: January 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(118) The Michigan Department of Environmental Quality submitted revisions to Michigan's State Implementation Plan (SIP) on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction as well as revisions to definitions.

(i) Incorporation by reference. The following sections of the Michigan Administrative Code are incorporated by reference.

(A) R 336.1102 Definitions; B, effective May 27, 2002.

(B) R 336.1104 Definitions; D, effective May 27, 2002.

(C) R 336.1105 Definitions; E, effective May 27, 2002.

(D) R 336.1107 Definitions; G, effective May 27, 2002.

(E) R 336.1108 Definitions; H, effective May 27, 2002.

(F) R 336.1113 Definitions; M, effective May 27, 2002.

(G) R 336.1118 Definitions; R, effective May 27, 2002.

(H) R 336.1120 Definitions; T, effective May 27, 2002.

(I) R 336.1915 Enforcement discretion in instances of excess emissions resulting from malfunction, start-up, or shutdown, effective May 27, 2002.

(J) R 336.1916 Affirmative defense for excess emissions during start-up or shutdown, effective May 27, 2002.

[FR Doc. 03–4260 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7454–5]

RIN 2003–AA00

Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes (CRT); Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes (CRT). We published the direct final rule on December 26, 2002 date (67 FR 78718–78731), to exclude used CRTs and glass removed from CRTs from the definition of ''solid waste'' in the EPA Region III Mid-Atlantic States (which include the States of Delaware, Maryland, and West Virginia and the Commonwealths of Pennsylvania and Virginia, and the District of Columbia). We stated in the direct final rule that if we received adverse comment by January 27, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule. We will address those comments in a subsequent final action on the parallel proposal also published on December 26, 2002, 67 FR 78761–78763. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of February 24, 2003, EPA withdraws the direct final rule published at 67 FR 78718–78731, on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marie Holman (3EI00), U.S. EPA Region III, Office of Environmental Innovation, 1650 Arch Street, Philadelphia, PA 19103–2029 or *holman.marie@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on December 26, 2002, to exclude (in specified circumstances) used CRTs and glass removed from CRTs from the definition of ''solid waste'' in the EPA Region III Mid-Atlantic States (which include the States of Delaware, Maryland, and West Virginia and the Commonwealths of Pennsylvania and Virginia, and the District of Columbia). EPA published a companion proposed rule (67 FR 78761–78763) on the same date as the direct final rule.

The companion proposed rule invited comment on the substance of the direct final rule and stated that if adverse comment was received by January 27, 2003, the direct final rule would not become effective and a document would be published in the **Federal Register** to withdraw the direct final rule before the February 24, 2003, effective date. The EPA subsequently received adverse comments on the final rule. EPA plans to address those comments in a subsequent action. Today's action withdraws the direct final rule; the Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes (conditional exclusion for CRTs is not approved under 40 CFR part 261).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 13, 2003.

Donald S. Welsh, Regional Administrator, Region III.

[FR Doc. 03–4371 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 02–269]

Telecommunications Relay Services and the Americans With Disabilities Act of 1990; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On February 7, 2003 (68 FR 6352), the Commission published final rules in the **Federal Register**, which amended the rules for coin sent-paid. This document contains a correction to the **DATES** section which was published inadvertently.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *jsievert@fcc.gov*.