This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. 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 rule 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). The rule merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal Government established in the Act. 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) or 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 significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, 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 state operating permit programs pursuant to title V of the Act, 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 an operating permit 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 an operating permit program 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 proposed 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operation permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

[FR Doc. 01–27257 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI; FRL–7094–6]

Clean Air Act Proposed Full Approval Of Operating Permits Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Michigan Title V Federal Operating Permits Program, submitted by Michigan pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Beth Valenziano at (312) 886–2703 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–2703, e-mail Addresses: *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act (the Act), EPA has promulgated regulations that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as Title V, and the implementing regulations, states developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state operating permit program by the expiration of its interim approval period, EPA must establish and

implement in that State a Federal program under 40 CFR part 71.

EPA promulgated final interim approval of the Michigan Title V program on January 10, 1997 (62 FR 1387), and the program became effective on February 10, 1997. On June 18, 1997 (62 FR 34010), EPA granted Michigan source category limited interim approval, approving Michigan's 4 year initial permit issuance schedule. Source category limited interim approval allows EPA to approve an initial state permit issuance schedule up to 2 years past the 3 year phase in period required by 40 CFR 70.4(b)(11)(ii).

Michigan submitted revisions to its Title V program for EPA approval on June 1, 2001, and submitted a supplemental package on September 20, 2001. The submittals included corrections to the interim approval issues identified in the January 10, 1997 interim approval action and additional program revisions and updates.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the January 10, 1997 action, EPA identified eight interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Schedule of Compliance

40 CFR 70.5(c)(8)(iii)(C) requires that a schedule of compliance for a source that is not in compliance with all applicable requirements at the time of permit issuance ''resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.'' Michigan's original rules did not include these provisions. MDEQ corrected this deficiency by adding the above quoted requirements to the definition of ''schedule of compliance'' in Rule (R) 336.1119(a).

2. Stationary Source

The 40 CFR 70.2 definition of ''major source'' requires a stationary source or any group of stationary sources to include all pollutant emitting activities located on one or more contiguous or adjacent properties (in addition to other requirements). Although MDEQ's definition addressed adjacency, it did not include the provision addressing contiguousness. MDEQ corrected this deficiency by adding the contiguous requirement to the definition of ''stationary source'' in R 336.1119(q).

3. Solid Waste Incineration Units

40 CFR 70.3 requires non-major solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act to obtain a Title V permit. These units are not eligible for a permit deferral under 40 CFR 70.3(b). Michigan's applicability rules did not include non-major solid waste incineration units required to obtain permit pursuant to section 129(e). MDEQ corrected this deficiency by revising the state's Title V applicability rule (336.1211(1)(c)) to specifically include all solid waste incineration units required to obtain a permit under section 129(e). In addition, MDEQ revised R 336.1211(2) to specifically require that all emissions be counted in determining a stationary source's potential to emit.

4. Major Source Determinations

R 336.1212(1) allowed emissions from certain insignificant activities to be exempted from determining sources' major source status. 40 CFR part 70 does not provide for any such exemptions. MDEQ corrected this deficiency by revising R 336.1212 to eliminate the portions of the rule that created the exemptions from determining major source status. In addition, MDEQ revised R 336.1211(2) to specifically require that all emissions are counted in determining a stationary source's potential to emit.

5. Compliance Certification

40 CFR 70.5(c)(9)(i), (ii), and (iv) require permit applications to include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance. Michigan's statutes and rules did not specifically include these provisions. MDEQ corrected this deficiency by revising R 336.1210(2) to explicitly include the requirements in 40 CFR 70.5(c)(9)(i), (ii), and (iv).

6. Penalties and Fines

Section 324.5534 of Michigan's Natural Resources and Environmental Protection Act (NREPA) provided exemptions from penalties or fines for violations caused by an act of God, war, strike, riot, catastrophe, or other conditions where negligence or willful misconduct was not the proximate cause. Title V does not provide for such broad penalty and fine exemptions. Michigan corrected this deficiency by repealing Section 324.5534 from the state statute.

7. Startup, Shutdown, Malfunction (SSM) Rules

Michigan's SSM rules [R 336.1913 and R 336.1914) provided an affirmative defense that was broader than that provided by 40 CFR 70.6(g), and that was also inconsistent with Section 110 of the Act, as interpreted in EPA's enforcement discretion policy. The state SSM rules therefore affected the state's enforcement and compliance assurance authorities required by 40 CFR 70.4(b)(3)(i), 70.4(b)(3)(vii), and 70.11. MDEQ corrected these deficiencies by rescinding R 336.1913 and R 336.1914.

8. Audit Privilege and Immunity Law

Michigan's audit privilege and immunity law, part 148 of NREPA, impermissibly affected numerous requirements of the state's Title V operating permit program, including: assuring compliance [70.4(b)(3)(i)]; enforcing permits and the requirement to obtain a permit [70.4(b)(3)(vii)]; and the general enforcement authorities [70.11(a) and (c)]. The EPA's final interim approval of Michigan's part 70 operating permit program outlined the changes and demonstrations required for full approval. Michigan corrected these deficiencies by amending part 148 of NREPA in accordance with EPA's recommendations, and by providing state Attorney General interpretations and an additional commitment regarding confidentiality agreements.[1]

B. Other Title V Program Revisions

The MDEQ has made changes to its Title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Michigan operating permits program based on the corrective program revisions the state submitted on June 1, 2001 and September 20, 2001. This proposed full approval of Michigan's corrective operating permit program submittal addresses only the requirements of Title V and part 70, and does not apply to any other federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. The EPA finds

[1] See the following correspondence for further information: a letter dated June 11, 1997 from Frank J. Kelley, Michigan Attorney General, to Russell J. Harding, MDEQ, regarding audit law interpretations; a memorandum dated June 20, 1997 from A. Michael Leffler, Michigan Department of Attorney General, to Russell J. Harding regarding audit law interpretations; a letter dated July 1, 1997 from Russell J. Harding to Steven A. Herman, USEPA, outlining agreed upon statutory revisions; a letter dated November 21, 1997 from Russell J. Harding, MDEQ, to Steven A. Herman, USEPA, submitting the revised audit privilege law; a letter dated December 12, 1997 from Steven A. Herman to Russell J. Harding stating that Michigan's title V audit law issues are resolved.

that Michigan has satisfactorily addressed the program deficiencies identified in EPA's January 10, 1997 interim approval rulemaking.

B. Citizen Comment Letters on Michigan Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The Sierra Club and the New York Public Interest Research Group challenged this action. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** document.

The EPA received two timely comment letters pertaining to the Michigan Title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. 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 rule 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). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal Government established in the Act. 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) or 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 significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 19, 2001.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 01–27259 Filed 10–29–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MN; FRL–7094–5]

Clean Air Act Proposed Full Approval of the Air Operation Permits Program; MN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Minnesota Title V Federal Operating Permits Program, submitted