



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2007-1092; FRL-9966-14-Region 5]**

**Air Plan Approval; Michigan Minor New Source Review**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve certain changes to the Michigan State Implementation Plan (SIP). This action relates to changes to the Permit to Install (PTI) requirements of the Michigan Rules submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017.

**DATES:** Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1092 at <http://www.regulations.gov>, or via email to [damico.genvieve@epa.gov](mailto:damico.genvieve@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, [Rineheart.rachel@epa.gov](mailto:Rineheart.rachel@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. Background

II. Review of State Submittals

III. What Action is EPA Taking?

IV. Incorporation by Reference.

V. Statutory and Executive Order Reviews.

### **I. Background**

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that the SIP include a program to provide for the "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." This includes a program for permitting construction and modification of both major sources and minor sources that the State deems necessary to protect air quality. The State of Michigan's minor source PTI rules are contained in Part 2 of the Michigan Administrative Code. EPA last approved changes to the Part 2 rules in 1982. The Michigan Department of Environmental Quality (MDEQ) has submitted several Part 2 revision packages since that time; however, EPA has not taken a final action on any of the submittals. The following table provides a summary of the various state submittals with the most recent version of each section of the Michigan Rule highlighted in bold.

Submittal	State Effective Date	Submittal Date	Rules Submitted 336.1xxx
1	04/20/1989	11/12/1993	240, 241.
	04/17/1992		201, 283.
	11/18/1993		278, 279, 280, 281, 282, 284, 285, 286, 287, 288, 289, 290.
2	07/26/1995	05/16/1996	201, 205, <b>208 (rescinded)</b> , <b>209</b> , 219, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290.
3	12/12/1996	04/03/1998	201a, 205.
4	06/13/1997	08/20/1998	278, 283, 284, 285, 286, 287, 290.
5	07/01/2003	09/02/2003	201, <b>201a</b> , 202, <b>203</b> , <b>204</b> , 205, <b>206</b> , 207, <b>212</b> , <b>216</b> , 219, 240, 241, 278, 278a, <b>279 (rescinded)</b> , 281, 282, 284, 285, 287, 289, 299.
6	06/20/2008	03/24/2009	<b>201</b> , <b>202</b> , <b>205</b> , <b>207</b> , <b>219</b> , <b>240</b> , <b>241</b> , <b>278</b> , 281, 284, 285, 288, <b>299</b> .
7	12/20/2016	2/21/2017	<b>278a</b> , <b>280</b> , <b>281</b> , <b>282</b> , <b>283</b> , <b>284</b> , <b>285</b> , <b>286</b> , <b>287</b> , <b>288</b> , <b>289</b> , <b>290</b>

EPA published a proposed disapproval of the 1993, 1996, and 1998 submittals on November 9, 1999; however, EPA never published a final disapproval. The changes included in the 2003, 2009, and 2017 submittals were primarily intended to address disapproval issues identified by EPA in 1999. At the time of the 1999 proposed disapproval, the Part 2 Rules also included the state's major non-attainment PTI program. The major non-attainment provisions have been removed from Part 2,

and are now covered by the Part 19 rules which were approved on December 16, 2013.

## **II. Review of State Submittals**

Section 110 (a) (2) (C) of the CAA requires that each SIP include a program to provide for the regulation of construction and modification of stationary sources as necessary to assure that the National Ambient Air Quality Standards (NAAQS) are achieved. Specific elements for an approvable construction permitting plan are found in the implementing regulations at 40 CFR 51 subpart I - Review of New Sources and Modifications. Requirements relevant to minor construction programs are 40 CFR 51.160-51.163. EPA regulations have few specific criteria for state minor new source review (NSR) programs. Generally, state programs must set forth legally enforceable procedures that allow the state to determine if a planned construction activity would result in a violation of the state's SIP or a national standard and prevent any activity that would. In accordance with 40 CFR 51.162, the state plan must identify the responsible agency for making permitting decisions. 40 CFR 51.160 requires that the plan identify the types and sizes of activities that are subject to the plan, provide that sources undertaking an activity submit adequate information regarding the location,

design and emissions related information to enable the state to make a determination, and discuss the air quality data and dispersion or other air quality modeling used. 40 CFR 51.161 provides specific criteria for public availability of information and opportunity for public comment. Finally, 40 CFR 51.164 requires that the plan identify the administrative procedures that will be followed in making permitting decisions.

The revisions to Part 2 submitted by MDEQ are largely provisions that strengthen the already approved minor NSR program adding greater detail with respect to applicability, required application material, and processing of applications; however, the revisions do include changes to waiver provisions and the addition of several categories of exemptions from the requirement to obtain a PTI. The revisions also include changes to the public notice requirements, Michigan R 336.1205. EPA is not acting on Michigan R 336.1205 at this time, and it will be addressed in a subsequent rulemaking action.

The expansion of exemptions would be viewed as a potential relaxation of the already approved plan; therefore, Michigan was required to provide information as required by section 110(1) of the CAA to demonstrate that the revision would not interfere with any applicable requirement concerning attainment and

reasonable further progress, or any other applicable requirement of the CAA. The 2003 and 2017 submittals provide analyses of the emissions associated with each new exemption and the impact they would have on air quality. EPA's review of the waiver and exemption provisions are discussed in greater detail below.

Michigan R 336.1202 provides a waiver from the requirement to obtain a permit prior to commencing construction under limited circumstances. The Prevention of Significant Deterioration (PSD) provisions of the CAA prohibit commencement of construction without first obtaining the required permit authorizing construction; however, the requirement only applies to major sources, and no such restriction is specified under the minor NSR program requirements set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that limited construction may begin before a permit is issued for minor sources. For example, EPA's October 10, 1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses limited preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued. Furthermore, EPA approved a rule for Idaho's permit program and Wisconsin's permit program which allowed construction to

commence under limited circumstance prior to a permit being issued. (See 68 FR 2217 and 73 FR 12893.) As stated previously, the minor NSR provisions at 40 CFR 51.160 require state programs to determine if activities would violate an applicable SIP or national standard and to prevent construction of an activity that would violate an applicable SIP provision or national standard. Michigan R 336.1202(1) requires an application for a waiver be submitted to MDEQ and requires MDEQ to act on the request within 30 days. Construction may not proceed unless the waiver is granted. The rule also indicates that the waiver does not guarantee approval of the required PTI and any construction activity would be at the owner/operator's risk. Michigan R 336.1202(2) limits the waiver to minor construction activities and activities that are not considered construction or reconstruction under a National Emission Standard for Hazardous Air Pollutants of 40 CFR part 61 or part 63. EPA finds the Michigan waiver provisions are consistent with EPA regulations and policy, are similar to waiver provisions previously approved in Idaho and Wisconsin, and provide adequate assurance that major construction activities would be prevented and activities will not result in a violation of the SIP or a national standard.

Generally, MDEQ requires a PTI for any activity that results in the emission of any amount of a regulated air pollutant. The state's minor NSR program does not exempt based on emission thresholds and instead lists specific exempt source categories of emissions. The exemption provisions considered in this action are Michigan R 336.1278, 336.1278a, and 336.1280-336.1290. When determining adequacy of the state rules, EPA is concerned with the possibility that an exemption might allow an activity that should be subject to major source permitting requirements escape appropriate review and permitting, that sources are required to maintain information adequate for the state to ensure that exemptions have been applied appropriately, and that the exemptions would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

Michigan R 336.1278 and 336.1278a provide limitation on the use of the specific exemptions provided in R 336.1280-336.1290, and require sources using the exemptions to maintain certain records to demonstrate that the exemptions have been applied appropriately. Michigan R 336.1278 excludes any activity that would be subject to PSD or major non-attainment permitting from use of the exemptions. The rule also defines activity to

include all "concurrent and related installation, construction, reconstruction, relocation, or modification of any process or process equipment" which will ensure that projects are aggregated properly before applying an exemption. Michigan R 336.1278a requires owner/operators applying an exemption to maintain records and a written demonstration supporting application of the exemption. Additionally, specific exemptions may include additional monitoring and recordkeeping as required to ensure that the equipment is operating as required under the exemption.

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The exemptions only apply to the need to obtain a PTI prior to construction. Exempt units would still be required to comply with any non-PTI related SIP requirements or standards under the CAA. The 2003 and 2017 submittals provide an estimation of emissions that could result from each exemption. Many of these exemptions would result in very low levels of emissions, generally less than 3 tons per year of a regulated pollutant. Several would likely result in no emission

of a regulated pollutant. Where an exemption could result in an increase of a regulated pollutant in amounts greater than 10 tons per year, MDEQ provided modeling, or in the case of ozone a qualitative analysis to demonstrate that the emissions that could result from the exempt categories would have no significant impact on compliance with the NAAQS. After reviewing the information provided by MDEQ, EPA agrees that the exemptions are unlikely to result in a violation of the NAAQS.

### **III. What Action is EPA Taking?**

EPA is proposing to approve all changes submitted by MDEQ except for changes to Michigan R 336.1205 which includes provisions for public notice. EPA will not be taking any action with respect to the changes in public notice and will be addressing Michigan R 336.1205 in a separate action. The already approved public notice procedures will remain in the SIP until EPA takes action on Michigan R 336.1205.

### **IV. Incorporation by Reference.**

In this rule, EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference Michigan's updated permitting rules

including 336.1209, effective 07/26/1995; 336.1201a, 336.1203, 336.1204, 336.1206, 336.1212, 336.1216, effective 07/01/2003; 336.1201, 336.1202, 336.1207, 336.1219, 336.1240, 336.1241, 336.1278, 336.1299, effective 06/20/2008; and 336.1278a, 336.1280, 336.1281, 336.1282, 336.1283, 336.1284, 336.1285, 336.1286, 336.1287, 336.1288, 336.1289, 336.1290, effective 12/20/2016. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**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: July 27, 2017.

Robert A. Kaplan,  
Acting Regional Administrator, Region 5.

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