



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0215; FRL-13010-04-R5]

**Air Plan Approval; Michigan; Infrastructure SIP Requirements for
the 2015 Ozone NAAQS; Michigan State Board Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an element of a State Implementation Plan (SIP) submission from the Michigan Department of Environment, Great Lakes, and Energy (Michigan) regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements ensure that the structural components of each State's air quality management program are adequate to meet CAA requirements. This action pertains to CAA section 110(a)(2)(E)(ii). The EPA received comments on its November 20, 2025, proposed rule and withdrew the accompanying direct final rule. After considering the comments, the EPA is approving this element of Michigan's March 8, 2019, SIP submission.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2019-0215. All documents in the docket are listed on the <https://www.regulations.gov> web site.

Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Kelsey Foss, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number: (312) 886-6008, email address: foss.kelsey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA.

I. Background

On November 20, 2025, (90 FR 52238), the EPA published a direct final rule approving an element of an infrastructure SIP revision submitted by Michigan on March 8, 2019, to address the infrastructure requirements of CAA sections 110(a)(1) and (2) for the 2015 ozone NAAQS. An explanation of the CAA requirements, a detailed analysis of the SIP submission, and the EPA's reasons for proposing approval were provided in the direct final rule and will not be restated here.

In the direct final rule, the EPA stated that if adverse

comments were received by December 22, 2025, the rule would be withdrawn and not take effect. On December 5, 2025, the EPA received two sets of adverse comments and, as a result, withdrew the direct final rule on January 6, 2026 (91 FR 335). Both sets of comments were from the Citizens Rulemaking Alliance (CRA). The EPA is addressing the comments in this final action based on the notice of proposed rulemaking also published on November 20, 2025 (90 FR 52311).

II. The EPA's Response to Comments

A summary of the comments, and the EPA's response, are provided below.

Comments: CRA states that the docket is incomplete according to Administrative Procedures Act (APA) requirements, and that the EPA did not provide sufficient explanations of how the rulemaking complies with the Regulatory Flexibility Act (RFA); the Small Business Regulatory Enforcement Fairness Act (SBREFA); the Paperwork Reduction Act (PRA); Executive Order 12866; and the Unfunded Mandates Reform Act (UMRA). CRA argues that this action is subject to the laws and executive order listed above because it "renders Michigan conflict-of-interest and disclosure provisions federally enforceable and establishes EPA's controlling interpretation of section 128 for Michigan." CRA also claims that the rulemaking does not meet the incorporation-by-reference requirements of 1 CFR part 51. CRA requests that the EPA provide additional documentation, analyses, and detailed explanations to ensure compliance with the APA, RFA, SBREFA,

PRA, UMRA, and Executive Order 12866; add a "corrected, specific incorporation-by-reference package" to the record; add all documents demonstrating Michigan's fulfillment of CAA section 128 to the docket; and then reopen the comment period for at least 30 days "to allow meaningful public participation after the record is complete."

Response: The EPA disagrees with these comments. The comments mischaracterize the EPA's action. This rulemaking is not incorporating any new material into the regulatory portion of Michigan's SIP. As explained in the direct final rule, CAA section 128(a)(1) does not apply to Michigan, and the Michigan rule fulfilling the conflict-of-interest disclosure requirement of CAA section 128(a)(2) is already contained in Michigan's SIP. Thus, the incorporation-by-reference requirements of 1 CFR part 51 do not apply to this rulemaking and no new State provisions are rendered federally enforceable by this rulemaking.

The EPA disagrees with the comment that the docket is incomplete. All materials reviewed by the EPA as part of this rulemaking are publicly available. In the direct final rulemaking, the EPA identified and provided website addresses for the Michigan actions that created and abolished the State boards that were subject to CAA section 128(a)(1). The EPA also identified the Michigan rule that fulfills the conflict-of-interest disclosure requirement of CAA section 128(a)(2). The proposed rulemaking to incorporate this Michigan rule into the State's SIP contains a detailed explanation of how the rule

meets the requirement of CAA section 128(a)(2). See 80 FR 36306 (June 24, 2015).

The EPA has complied with the UMRA by making its own determination that this rule will not result in expenditures of \$100M or more, and therefore the EPA does not need to complete a statement under 2 U.S.C. 1532.

The RFA and SBREFA are inapplicable to this rulemaking because the EPA has certified that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory analysis provisions of the RFA are only triggered by a threshold determination by the EPA that this rule will have a significant economic impact on a substantial number of small entities. Because the EPA has certified that this rule will not have a significant economic impact, sections 603 and 604 of the RFA do not apply to this rulemaking. 5 U.S.C. 605(b). In section IV of the direct final rule, the EPA provided the factual basis for our certification, which is that this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. The full explanation is repeated in section IV of this final rulemaking.

The EPA has complied with the PRA by certifying in the rule that the PRA does not apply because the action does not involve an information collection burden as defined by the CAA. See 44 U.S.C. 3502(2).

Lastly, the EPA has complied with Executive Order 12866 by

determining that this rulemaking is not a significant regulatory action as defined in Executive Order 12866. This rulemaking does not impose any new Federal or State requirements on any entities.

III. What Action is the EPA Taking?

The EPA is approving Michigan's March 8, 2019, submission as satisfying the requirement of CAA section 110(a)(2)(E)(ii) for the 2015 ozone NAAQS.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the PRA (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 RFA (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the UMRA of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This

action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: May 4, 2026.

Anne Vogel,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. In § 52.1170, the table in paragraph (e) is amended under the heading “Infrastructure,” by revising the entry for “Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS” to read as follows:

§ 52.1170 Identification of plan.

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(e) * * *

EPA-APPROVED - MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * * * *				
Infrastructure				
* * * * *				
Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS	Statewide	3/8/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) Prong 3, D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Disapproved CAA elements: 110(a)(2)(D)(i)(I) Prongs 1 and 2, and 110(a)(2)(D)(i)(II) Prong 4.
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