

Proposed Revisions to the State of Michigan State Implementation Plan

for
Part 1. Definitions
Part 2. Air Use Approval

R 336.1101(q), R 336.1103(aa)
R 336.1201a, R 336.1202-1203, R 336.1206-1207, R 336.1209,
R 336.1212, R 336.1214a, R 336.1216, R 336.1219,
R 336.1220 (rescind), R 336.1240-1241, R 336.1278,
R 336.1285, R 336.1291 and R 336.1299 (rescind)



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Attachments

Attachment A	Secretary of State’s notice of filing Administrative Rules, dated June 20, 2008, for 2004-007EQ (Part 2)
	Secretary of State’s notice of filing Administrative Rules, dated December 20, 2016, for 2014-153EQ (Part 1)
	Secretary of State’s notice of filing Administrative Rules, dated December 20, 2016, for 2014-154EQ (Part 2)
	Secretary of State’s notice of filing Administrative Rules, dated January 2, 2019, for 2017-068EQ (Part 2)
Attachment B	Final form of adopted rules, Part 1, effective December 20, 2016 Final form of adopted rules, Part 2, effective January 2, 2019
Attachment C	Strikethrough bold version as submitted for approval – (Part 1) Strikethrough bold version as submitted for approval – (Part 2)
Attachment D	Public Hearing materials for 2004-007EQ Public Hearing materials for 2012-107EQ Public Hearing materials for 2014-153EQ Public Hearing materials for 2014-154EQ Public Hearing materials for 2017-068EQ
Attachment E	Rule change summary and impact discussion to address CAA Section 110(l)

**Proposed Revisions to the State of Michigan
State Implementation Plan for
Part 1. Definitions and Part 2. Air Use Approval**

Introduction

The State of Michigan, through the Michigan Department of Environment, Great Lakes, and Energy (EGLE), is requesting a revision to the Michigan State Implementation Plan (SIP) for two Part 1 rules and several Part 2 rules, as new versions of these rules have been promulgated over the past several years. Through this SIP revision, EGLE will maintain consistency between rules contained in the SIP and those in the Michigan Air Pollution Control Rules.

On October 28, 2013; December 20, 2016; and January 2, 2019; the State of Michigan promulgated rule packages 2012-107EQ, 2014-153EQ and 2014-154EQ, and 2017-068EQ, respectively, addressing various Part 1 and 2 rules. These rule packages contained a variety of changes, many of which were to previously SIP approved rules. This document will detail those changes and provide discussion concerning those changes, as necessary.

In addition, on June 20, 2008, the State of Michigan promulgated rule package 2004-007EQ, which rescinded a Part 2 rule. This, as well as three other rules currently in Michigan's SIP, are rules which the State of Michigan would like to have removed.

This submittal demonstrates compliance with the requirements of Title 40 of the Code of Federal Regulations (CFR), Section 51, Appendix V, and includes the technical support required to satisfy the federal Clean Air Act (CAA) Section 110(l) anti-backsliding requirements.

Table of Rules/Requests

Table 1 gives various background details regarding each rule as well as the request to approve the most recent version into Michigan's SIP or to remove it (or a portion of it) from the SIP. The table contains the following details:

- Specific rules being addressed by this request.
- The effective date of the version of Michigan's rule currently approved in Michigan's SIP (if applicable).
- The volume and page number of the *Federal Register* entry that notices the most recent approval of the rule.
- The designation for Michigan's rule package that contained the current SIP approved rule.
- The six Michigan rule packages and rules in those packages that are being addressed by this request.
- Request for approval or removal.
- At the bottom of the table are various important dates for the promulgation of each of the six rule packages.

Table 1 – Rule Requests and Rule Package Information

	SIP approval information			State Rule Packages with changes since SIP approved					Request
	State Effective Date of SIP Approved	Federal Register Date of most recent SIP Approval	State Rule Package	2004-007EQ	2010-035EQ	2012-107EQ	2014-153EQ and 2014-154EQ	2017-068EQ	
R 336.1101(q)	N/A			-	-	-	x (2014-153EQ)	-	Approve 12/20/2016 version into SIP
R 336.1103(aa)	03/08/2008	78 FR 76064	2004-006EQ	-	-	-	x (2014-153EQ)	-	Approve 12/20/2016 version into SIP
R 336.1201a	07/01/2003	83 FR 44485	2002-004EQ	-	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1202	06/20/2008	83 FR 44485	2004-007EQ	approved	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1203	07/01/2003	83 FR 44485	2002-004EQ	-	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1206	07/01/2003	83 FR 44485	2002-004EQ	-	-	x	x	-	Approve 12/20/2016 version into SIP
R 336.1207	06/20/2008	83 FR 44485	2004-007EQ	approved	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1209	07/26/1995	83 FR 44485	1995-AQD21	-	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1212	07/01/2003	83 FR 44485	2002-004EQ	-	-	-	x (moot)	x (moot)	Remove from SIP
R 336.1214a	N/A			x	-	-	x	-	Approve 12/20/2016 version into SIP except R 336.1214a(5)
R 336.1216	07/01/2003	68 FR 63735	2002-004EQ	-	-	-	x (moot)	-	Remove from SIP
R 336.1219	06/20/2008	83 FR 44485	2004-007EQ	approved	-	-	x	-	Approve 12/20/2016 version of R 336.1219(1) into SIP. Remove R 336.1219(2) from SIP.
R 336.1220	08/21/1981	47 FR 3764	1981-AQD-22	x (rescinded)	-	-	-	-	Remove from SIP
R 336.1240	06/20/2008	83 FR 44485	2004-007EQ	approved	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1241	06/20/2008	83 FR 44485	2004-007EQ	approved	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1278	06/20/2008	83 FR 44485	2004-007EQ	approved	-	-	x	-	Approve 12/20/2016 version into SIP
R 336.1285	12/20/2016	83 FR 44485	2014-154EQ	approved	-	-	approved	x	Approve 1/2/2019 version into SIP
R 336.1291	N/A			-	-	-	x	-	Approve 12/20/2016 version into SIP except R 336.1291(2)(a) through (d) and non-criteria pollutants listed in Table 23
R 336.1299	06/20/2008	83 FR 44485	2004-007EQ	approved	x (moot)	-	x (rescinded)	-	Remove from SIP
		Certificate of Approval		12/06/2007	05/21/2012	08/27/2013	06/06/2016	10/19/2018	
		Legal Certification of Rules		12/07/2007	Undated	09/18/2013	06/14/2016	Undated	
		Notice of Filing		06/20/2008	06/08/2012	10/28/2013	12/20/2016	01/02/2019	

Code of Federal Regulations (CFR) Completeness Review

Part 40 CFR 51 Appendix V, requires specific components are provided with any SIP submittal, divided into three subsections: Administrative, Technical, and Exceptions. The State of Michigan is obligated to address specific components, which are enumerated below.

Administrative Materials

1. Formal Request

Appendix V requires *“A formal letter of submittal from the governor or designee requesting USEPA approval of the revision.”*

A cover letter dated <place holder for date>, 2021, from Liesl Clark, Director of EGLE, to Kurt Theide, Regional Administrator, United States Environmental Protection Agency (USEPA), Region 5, requesting approval of SIP revisions accompanies this submittal.

A letter dated July 3, 2019, from Governor Gretchen Whitmer to the USEPA, Region 5, delegates authority to the EGLE Director to make any submittal, request, or application under the federal Clean Air Act. This letter has been supplied to the USEPA Region 5 previously, and therefore will not be included with this submittal, but is available upon request.

2. Adoption in State Regulations

Appendix V requires *“Evidence that the state has adopted the revision in the state code or body of regulations; or issued the permit, order, or consent agreement (hereafter document) in final form. That evidence should include the date of adoption or final issuance as well as the effective date of the revision if different from the adoption/issuance date.”*

Copies of the following Secretary of State’s “Notices of Filing Administrative Rules” are included in Attachment A:

... for rule package 2004-007EQ (which contains rule R 336.1220 and many others already approved in Michigan’s SIP), dated June 20, 2008;

... for rule package 2014-153EQ (which contains rules R 336.1101(q), R 336.1103(aa)) dated December 20, 2016;

... for rule package 2014-154EQ (which contains rules R 336.1201a, R 336.1202-1203, R 336.1206-1207, R 336.1209, R 336.1212, R 336.1214a, R 336.1216, R 336.1219, R 336.1240-1241, R 336.1278, R 336.1285; R 336.1291, and R 336.1299) dated December 20, 2016;

... for rule package 2017-068EQ (which contains rules R 336.1212 and R 336.1285), dated January 2, 2019.

The following Secretary of State's "Notices of Filing Administrative Rules" were not included because they were made irrelevant based on later actions, but are available upon request:

... for rule package 2010-035EQ dated June 9, 2012. It contains an earlier version of rule R336.1299 but was later rescinded in a rule package noted above;

... for rule package 2012-107EQ dated October 28, 2013. It contained earlier versions of rule R336.1206 that were later superseded by a rule package noted above.

3. Necessary Legal Authority

Appendix V requires *"Evidence that the state has the necessary legal authority under state law to adopt and implement the revision."*

Section 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, gives the agency the authority to promulgate the revised rules. A copy is available upon request or at the website listed below.

<http://legislature.mi.gov/doc.aspx?mcl-324-5512>

4. Copy of Rule/Regulation

Appendix V requires *"A copy of the actual regulation or document submitted for approval and incorporation by reference into the SIP, including indication of the changes made to the existing approved SIP, where applicable. The submittal should be a copy of the official state regulation/document signed, stamped, and dated by the appropriate state official indicating that it is fully enforceable by the state. The effective date of the regulation/document should, whenever possible, be indicated in the document itself."*

The final forms of the adopted changes in Part 1 and 2 are included in Attachment B.

A strikethrough bold version of changes in the Part 1 and 2 rules are included in Attachment C.

Note: In instances when the above versions of rules have portions for which Michigan is NOT seeking inclusion in the SIP, those portions use an italics/gray font to indicate their presence in our current rules for completeness but are not intended to be included in the final SIP approval.

5. Requirements to follow State procedures

Appendix V requires *"Evidence that the state followed all of the requirements of its administrative procedures act (or equivalent) in conducting and completing the adoption/issuance of the revision."*

Before being finalized, two intermediate steps are required to promulgate a rule:

First, the Certificates of Approval from Michigan's Legislative Service Bureau are signed, which certify the proposed rules as to form, classification, and arrangement. Table 1 contains the dates these events occurred. Copies of the certificates are available upon request.

Second, the Legal Certification of Rules from Michigan Department of Licensing and Regulatory Affairs certifies legality by determining they are "within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act." The dates of this step for each rule package (when available) are listed in Table 1 and copies are available upon request.

The final step, which is contingent on completion of the aforementioned steps, the Notice of Filing of Administrative Rules from the Michigan Department of State, is completed and a copy of the four relevant rule packages are supplied in Attachment A, while the two packages containing earlier revisions of rules are available upon request.

6. Public Notice

Appendix V requires *"Evidence that public notice was given of the proposed change consistent with procedures approved by USEPA, including date of publication of such notice."*

Public notice for the rules addressed in this submittal was given at the time of promulgation, along with notification that the new rules would be submitted for SIP approval. However, the public was not given the opportunity to comment on the requested action of removing certain rules from the SIP, so a public comment period addressing the entire package will be conducted. The public notice addressing revision of the SIP will be published in Michigan's environmental calendar located at <http://www.michigan.gov/envcalendar>, a copy of which is available upon request. If any additional evidence is required from the original rule promulgation public notices, this will also be available upon request.

7. Public Hearing

Appendix V requires *"Certification that public hearings were held in accordance with the information provided in the public notice and the state's administrative procedures act (or equivalent), if applicable."*

Since the public was notified of the SIP package, a public hearing can be requested. Details of a potential hearing will be published at <http://www.michigan.gov/envcalendar>. A copy of this notification will be available upon request.

8. Public Comments

Appendix V requires *“Compilation of public comments and state’s response thereto.”*

Attachment E contains five reports summarizing public comments and responses to the Joint Committee on Administrative Rules (JCAR). (The public comments for 2010-035EQ were not provided, as the next rule action was to rescind the rule. The JCAR report addressing this rule recension is also available upon request). These reports are provided for the USEPA to see how issues were addressed at the time the rules were originally promulgated. However, as a result of the upcoming public comment and opportunity for a hearing, another report may be necessary, and will be included if comments are received.

Technical Support

1. Pollutants

Appendix V requires *“Identification of all regulated pollutants affected by the plan.”*

The Part 1 and 2 rules being requested for inclusion in Michigan’s SIP can potentially affect all regulated pollutants.

2. Source attributes

Appendix V requires *“Identification of the locations of affected sources including the USEPA attainment/nonattainment designation of the locations and the status of the attainment plan for the affected areas.”*

Since the Part 1 and 2 rules included in this request affect source permitting and exemptions, they may potentially affect every source in the state of Michigan in both attainment and nonattainment areas.

3. Emissions

Appendix V requires *“Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.”*

Changes to Part 1 and 2 rules vary in their impact. Many changes are only grammatical, change rule references, or are clarifications to existing rules that have little to no effect on emissions. A summary of changes is provided in Attachment E, which contains a more detailed analysis of rules, as needed.

4. National Ambient Air Quality Standards (NAAQS)

Appendix V requires *“The State’s demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented. For all requests to redesignate an area to attainment for*

a national primary ambient air quality standard, under section 107 of the Act, a revision must be submitted to provide for the maintenance of the national primary ambient air quality standards for at least 10 years as required by section 175A of the Act.”

For each rule change, the analysis provided in Attachment E explains why EGLE expects these changes will not impact our ability to comply with the NAAQS, affect any designations, or result in backsliding.

5. Modeling

Appendix V requires *“Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.”*

A modeling demonstration is not applicable for the changes requested in this submittal.

6. Controls

Appendix V requires *“Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.”*

No evidence that emission limitations are based on continuous emission reduction technology is necessary for this submittal.

7. Special Conditions

Appendix V requires *“Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.”*

For many rules in this submittal, this requirement would not be applicable as they are not associated with emission levels. However, for those few that have emission levels, a more detailed description/analysis is included in Attachment E as appropriate.

8. Compliance

Appendix V requires *“Compliance/enforcement strategies, including how compliance will be determined in practice.”*

EGLE’s Air Quality Division compliance staff will investigate facilities on a regular basis to determine if facilities are meeting the requirements of these changes.

9. Justifications

Appendix V requires *“Special economic and technological justifications required by any applicable USEPA policies, or an explanation of why such justifications are not necessary.”*

There are no known USEPA policies that are applicable to this submittal.

Exceptions

Exceptions are granted in cases when the state requests parallel processing. The parallel processing procedure is not being utilized at this time.

Clean Air Act Section 110(I) Requirements

Section 110(I) of the CAA governs the submittal of SIP revisions. It states, *“Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”*

Attachment E contains a discussion and/or analysis for all rules being addressed with this document.

Conclusions

Through this proposed revision to the State of Michigan SIP, EGLE has demonstrated the satisfaction of all the requirements of 40 CFR Part 51, Appendix V, and CAA Section 110(I). EGLE has demonstrated that the proposed SIP revision will not affect attainment or reasonable further progress. Therefore, EGLE requests that the versions of the rules included in this document be approved into the Michigan SIP and replace any previous versions of the Part 1 and 2 rules in the Michigan SIP. EGLE also requests that R 336.1212, R 226.1216, R 336.1219(2), R 336.1220, and R 336.1299 be removed from the Michigan SIP.