ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0295; FRL–10162–05–R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Michigan State Implementation Plan (SIP) that Michigan's Department of Environment, Great Lakes, and Energy (EGLE) submitted on March 8, 2022. These revisions amend Michigan's SIP-approved rules for minor New Source Review (NSR) found in Michigan Air Pollution Control Rules Part 2, Air Use Approval. This action updates Michigan's minor NSR rules in the SIP to exempt certain processes and equipment from the requirement to obtain a preconstruction permit.

DATES: This final rule is effective on December 18, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0295. All documents in the docket are listed on the *https://www.regulations.gov* website. 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 at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone David Ogulei, Environmental Engineer, at (312) 353–0987 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: David Ogulei, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0987, *Ogulei.david@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

Section 110(a)(2)(C) of the Clean Air Act (CAA or Act) 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 ensure that National Ambient Air Quality Standards (NAAQS) 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. 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 51.160–51.164. Generally, State minor NSR 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 do so. In accordance with 40 CFR 51.162, the State plan must identify the responsible agency for making permitting decisions. Under 40 CFR 51.160, the plan must identify the types and sizes of activities that are subject to the plan, including a discussion of the basis for determining which facilities will be subject to review, provide that sources undertaking an activity submit adequate information regarding the location, design, and emissions related information, and discuss the air quality data and dispersion or other air quality modeling used to determine whether the activity would comply with the CAA. Restrictions on allowable stack heights are found in 40 CFR 51.164. Under 40 CFR 51.161, the plan must meet specific criteria for public availability of information and opportunity for public comment. Finally, 40 CFR 51.163 requires that the plan identify the administrative procedures that will be followed in making permitting decisions.

Michigan's minor source preconstruction permitting rules are contained in Part 2 of the Michigan Administrative Code, which EPA last approved into the Michigan SIP on April 27, 2023 (88 FR 25498). *See* 40 CFR 52.1170. Michigan's SIP generally requires a permit to install (PTI) for any change resulting in an increase in the emissions of a regulated pollutant unless the change falls into one or more of the categories of exemptions contained in Michigan R 336.1280 through Michigan R 336.1290.

On September 27, 2022 (87 FR 58471), EPA proposed to approve (via a direct final rulemaking) revisions to the Michigan SIP that EGLE submitted on March 8, 2022. During the public comment period, EPA received adverse comments on the proposed approval of revisions to Michigan R 336.1285 ''Permit to install exemptions; miscellaneous'' and R 336.1291 ''Permit to install exemptions; emission units with ''de minimis'' emissions.'' These rules exempt certain processes and equipment from Michigan's minor NSR permitting program. On November 15, 2022 (87 FR 68364), EPA published an action withdrawing the direct final rule. On April 27, 2023 (88 FR 25498), EPA approved the revisions to Michigan's Air Pollution Control Rules Part 1, Definitions, and Part 2, Air Use Approval, for inclusion in the Michigan SIP but deferred action on the Michigan Part 2 rule revisions to R 336.1285 and R 336.1291.

On November 14, 2023, in response to comments we received on the 2022 direct final rule, Michigan supplemented its March 8, 2022, submittal with additional information regarding Michigan R 336.1285(2)(oo) and R 336.1291. On April 25, 2024 (89 FR 31677), EPA proposed approval of the Michigan Part 2 rule revisions to Michigan R 336.1285 ''Permit to install exemptions; miscellaneous'' and R 336.1291 ''Permit to install exemptions; emission units with ''de minimis'' emissions.''

II. Summary of EPA Analysis

When determining approvability of State permitting exemption rules, EPA evaluates the possibility that an exemption might allow an activity that should be subject to major or minor source permitting requirements to 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 of any NAAQS and reasonable further progress, or any other applicable requirement of the CAA.

Consistent with 40 CFR 51.160–51.164 and section 110 of the Act, EPA has previously approved into the Michigan SIP certain minor source air

permit exemptions found in Michigan R 336.1280 through R 336.1290 (Rules 280–290), as well as Michigan R 336.1278 and R 336.1278a (Rules 278 and 278a), which explain the scope of those exemptions. *See* 40 CFR 52.1170. These rules provide the requirements for certain sources and emission units that are seeking to avoid air permitting, subject to the recordkeeping requirements of those provisions. The existing air permit exemptions are specific to certain categories of equipment such as oil and gas processing, plastic processing, and surface coating, among others.

Michigan's air permit exemption rules have restrictions on the use of the exemptions in Michigan R 336.1280–336.1290 and require sources using the exemptions to maintain certain records to demonstrate that the exemptions have been applied appropriately. Specific exemptions may include additional monitoring and recordkeeping as necessary to ensure that the equipment is operating as required under the exemption. As further explained below, this action pertains to additional air permit exemptions found in Michigan R 336.1285(oo) and R 336.1291. Sources seeking to rely on the new exemptions in Michigan R 336.1285(oo) and R 336.1291 would generally be subject to the same recordkeeping requirements as those that currently apply to those relying on Michigan R 336.1280–336.1290.

Under Michigan R 336.1278, the exemptions in R 336.1280 to R 336.1291 do not apply to any ''activity'' that is subject to the prevention of significant deterioration of air quality (PSD) regulations or NSR regulations for major sources in nonattainment areas. An ''activity'' is defined 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. The exemptions in Michigan R 336.1280 to R 336.1291 also do not apply to the construction, modification, or reconstruction of major sources of hazardous pollutants as defined in 40 CFR parts 61 and 63. Further, the exemptions apply to the requirement to obtain a PTI only and do not exempt any source from complying with any other applicable requirement or existing permit limitation.

In this final action, EPA finds that EGLE's proposed revisions to Michigan's SIP-approved Part 2 rules meet the requirements of section 110(a)(2)(C) of the Act and the minimum program requirements of 40 CFR 51.160–51.164. EPA is approving into the Michigan SIP the following revisions to Michigan's Part 2 rules:

A. Michigan R 336.1285(2)(oo) ''Permit to install exemptions; miscellaneous''

Michigan R 336.1285(2)(oo) exempts vapor intrusion mitigation systems from the requirement to obtain a PTI. Specifically, this exemption applies to equipment or systems, or both, used exclusively to mitigate vapor intrusion of an indoor space, that is not on the property where the release of the hazardous substance occurred, and which has an exhaust that is: (1) unobstructed vertically upward; (2) at least 12 inches above the nearest eave of the roof or at least 12 inches above the surface of the roof at the point of penetration; (3) more than 10 feet above the ground; and (4) more than 2 feet above or more than 10 feet away from windows, doors, other buildings, and other air intakes.

B. Michigan R 336.1291 ''Permit to install exemptions; emission units with ''de minimis'' emissions''

Michigan R 336.1291 exempts emission units with ''de minimis'' emissions from the requirement to obtain a PTI. Specifically, Michigan R 336.1291 exempts each emission unit in which potential emissions of non-greenhouse gas (GHG) criteria pollutants do not exceed emission rates ranging from 0.1 tons per year for lead to 10 tons per year for carbon monoxide, nitrogen oxides (NO_X), sulfur dioxide (SO_2) or total particulate matter. The ''de minimis'' emissions threshold for GHGs is 75,000 tons per year when reported as carbon dioxide equivalents. As relevant to Michigan R 336.1291, ''potential emissions'' refers to the emission unit's potential to emit (PTE) as defined at Michigan R 336.1116(n), R 336.2801(hh), and R 336.2901(z). Under those provisions, PTE means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limit on the capacity of the stationary source to emit an air contaminant, including air pollution control equipment and restrictions on the hours of operation or the type or amount of material combusted, stored, or processed, must be treated as part of its design only if the limit, or the effect it would have on emissions, is legally enforceable.

Rule 291 would provide for a general exemption from air permitting for sources and projects with de minimis emissions and can be considered a backstop for the overall air permitting exemptions across all industry types. Any emission unit that has potential emissions above those defined in Rule 291 would be required to obtain a preconstruction permit from EGLE. Rule 291 requires the owner or operator to maintain a description of the emission unit throughout the life of the unit including documentation and calculations identifying the quality, nature, and quantity of the air contaminant emissions. This information is to be maintained in sufficient detail to demonstrate that the potential emissions of the emission unit are less than those listed in Rule 291.

III. EPA's Response to Comments

During the comment period, which closed on May 28, 2024, EPA received one set of consolidated comments from Great Lakes Environmental Law Center, Sierra Club Environmental Law Program, and Air Law for All, Ltd. We respond to the comments in this section.

Comment: The commenters note that section 110(l) of the CAA prohibits approval of any SIP revision that would interfere with any applicable requirement of the Act, and that for minor NSR programs, the section 110(l) analysis must consider the program as a whole to determine whether the construction or modification of sources would interfere with attainment and maintenance of the NAAAQs.

EPA Response: The CAA's NSR program requires EPA and States to regulate the construction or modification of stationary sources of air emissions under a program of cooperative federalism. The NSR program governs both large sources of emissions, referred to as ''major'' sources, and small sources of emissions, referred to as ''minor'' sources. Because major sources have the potential to have a greater impact on air quality, the CAA's requirements largely focus on controlling those sources' emissions, and EPA and States have likewise focused most of their regulatory efforts on addressing major sources' emissions.

This final action does not change any elements of Michigan's NSR program for major sources in attainment or nonattainment areas as addressed by parts C and D of the CAA and its implementing regulations at 40 CFR 51.165 and 40 CFR 51.166. Rather, this action is limited to revisions to Michigan's minor NSR program to clarify the types of construction or modification activities that must obtain a PTI under that program.

The commenters correctly note that section 110(l) of the CAA prohibits EPA from approving a SIP revision 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. 42 U.S.C. 7410(l). However, EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved; rather, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. *See* 83 FR 44493 (August 31, 2018) (citing *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA,* No. 06–61030 (5th Cir. Aug. 13, 2008)).

In its final rule approving the existing air permit exemptions in Michigan R 336.1280 through Michigan R 336.1290, EPA explained that it approved Michigan's permit exemptions after examining various information EGLE provided in support of its proposed rules, including emission projections, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative modeling or qualitative air quality analysis. For example, where the exemption did not contain enforceable limitations on production and operation, and projected emission increases were greater than 10 tons per year of a criteria pollutant, EGLE provided an air quality analysis that EPA found to be adequate. EPA determined that the exemptions would not interfere with attainment of any NAAQS or any other CAA requirement because the use of the exemption would provide the same level of control measures as the control measures that would be included in an individual preconstruction permit, the exemption would result in little or no increase in emissions of a criteria pollutant, or EGLE provided a suitable air quality analysis demonstrating no interference with attainment, reasonable further progress, or any other requirement of the Act. *See* 83 FR 44493–44494 (August 31, 2018).[1]

The Rule 291 exemptions address sources that are small, have low emissions (including several pollutants with thresholds substantially less than 10 tons per year), and which are few compared to those already relying on existing exemptions. Indeed, Michigan provided information indicating that emission units that would be exempted under Rule 291 at major sources subject to title V of the Act represent less than 1 percent of the subset of exemptions required to be included in the title V permit renewal application. Thus, Rule 291 would only allow a limited additional number of inconsequential emission units to forego minor NSR. *See* 86 FR 31927 (June 16, 2021) (finding that the Arizona Department of Environmental Quality (ADEQ) adequately demonstrated that emissions from the sources and projects to be exempted from ADEQ's minor NSR program were inconsequential to attainment or maintenance of the NAAQS). Michigan's minor NSR program would continue to cover a large majority of emissions from minor stationary sources and meet applicable statutory and regulatory standards. Further, Rule 291, in conjunction with the SIP-approved Rules 278 through 290, would subject exempt emission units with potential emissions of non-GHG pollutants less than 10 tons per year to the same level of other control measures (including monitoring and recordkeeping requirements contained in any applicable State and Federal rules) as would normally be required in an individual preconstruction permit for units of that size.

Therefore, consistent with section 110(l) of the Act, Michigan has demonstrated to EPA's satisfaction that the exemptions in this action would not cause Michigan's minor NSR program to interfere with attainment, reasonable further progress, or any other requirement of the Act.

Comment: The commenters assert that the combination of existing exemptions with the new exemptions may push the minor NSR program to the point where it no longer protects the NAAQS, and that EPA cannot rely on how Michigan's minor NSR program has performed historically. In particular, the commenters note that the Detroit area is very close to the nonattainment threshold for ozone.

EPA Response: Emissions from the Rule 291 emission units are insignificant compared to those from emission units and activities that are required to obtain a PTI or are relying on the existing approved air permit exemptions. With rare exceptions, emission units of the type, size, and emissions that would be exempted under R 336.1285(2)(oo) and R 336.1291 would be subjected to the same level of other control measures (including recordkeeping requirements) as would be required in an individual preconstruction permit for such units in any area. Where additional control measures or a site-specific air quality analysis might be needed, EPA and EGLE's review of the records that are required to be kept under these rules would provide EGLE and EPA with the information needed to support imposing such additional control measures on the facility as necessary. In addition, exempt emission units would still be required to comply with all applicable non-PTI related SIP requirements or standards under the CAA and the Michigan SIP.

Based on our review of information that Michigan submitted regarding emissions from sources that are likely to use these exemptions, we disagree that the additional exemptions would impact Michigan's ability to address particulate matter with an aerodynamic diameter less than 2.5 micrometers ($PM_{2.5}$) or ozone NAAQS attainment issues or that their approval into the Michigan SIP would somehow push Michigan's minor NSR program over the point where it no longer protects the NAAQS. As we explained at proposal, EGLE demonstrated through single- and multiple-emission unit air quality modeling that the proposed exemptions will not affect Michigan's attainment status for any NAAQS or cause any backsliding on achieved improvements.

With respect to EPA's redesignation of the Detroit area from moderate nonattainment to attainment of the 2015 ozone standard,[2] there is no evidence suggesting that if EGLE were to require PTIs for the exempted units in an area, and the area were to subsequently fall into nonattainment, the permitting of these exempted units would have somehow precluded that from happening. Historically, where Michigan has not achieved attainment, there have been no indications that exemptions have been the cause. Similarly, when an area has come into attainment—such as the Detroit area—Michigan did not find it necessary to modify any exemptions to accomplish the attainment redesignation by permitting the affected facilities. For the Detroit area redesignation to attainment, EGLE did not need to change any air permitting exemptions as part of its plan to attain the standards to demonstrate it had met the criteria for the redesignation. Regarding those standards for which Michigan was not able to demonstrate attainment, there is no evidence the permitting of these exempted facilities would address the issue.

It is worth noting that sources and projects of the size that would be exempted by Rules 280 to 291 are not required to be modeled as part of the standard air permitting process, so a project-specific NAAQS compliance

[1] On April 22, 2019, the Michigan Department of Environmental Quality was reorganized as EGLE. At the time this **Federal Register** notice was published, the former title was still in use.

[2] 88 FR 32594 (May 19, 2023).

demonstration is not done for such projects. Also, additional controls are normally not prescribed when permitting such small projects regardless of the attainment status of the project's location beyond those control measures required by any applicable Federal or State regulations. In nonattainment areas, emissions offsets would be required for sources and projects that would emit at levels that are higher than the thresholds we are approving today.

Furthermore, under section 110(k)(5) of the Act, if EPA subsequently concludes that the Michigan SIP is substantially inadequate to attain or maintain a specific NAAQS, or to otherwise comply with any requirement of the Act, EPA may order the State to revise and correct its SIP as necessary. 42 U.S.C. 7410(k)(5).

Comment: The commenters state that Michigan's section 110(l) modeling demonstration indicates that the new exemptions could cause the Detroit area to violate the ozone standard again.

EPA Response: The commenters point to Michigan's comparison of theoretical maximum emission rates and ambient impacts to significant impact levels (SILs). SILs are modeling screening thresholds used in PSD air quality analyses to determine whether additional, comprehensive, air quality analyses are needed to demonstrate that major projects do not cause or contribute to NAAQS violations. A modeled exceedance of the SIL does not mean that the NAAQS would be violated; it is simply one step in a multi-step process of proving that the project would not cause or contribute to a NAAQS violation.

Michigan used EPA's Modeled Emission Rates for Precursors (MERPs) as a Tier 1 demonstration tool to address ozone and $PM_{2.5}$ impacts from single sources. Michigan evaluated worst case scenarios against Rule 291 exemption thresholds. As explained in Michigan's supplemental submittal, there is no evidence sources are using the Rule 291 exemptions at the levels in the modeled scenarios. Actual air quality impacts from sources relying on the Rule 291 exemptions would be much lower than those estimated in Michigan's analysis. This is confirmed by Michigan's analysis of the State's universe of permitted sources which showed that the use of Rule 291 air permit exemptions is extremely limited in practice.

Comment: The commenters object to EPA using data from Michigan's implementation of Rule 291 before it has been approved into the Michigan SIP to show that the SIP, with the new exemptions, would continue to protect the NAAQS.

EPA Response: In previous comments on our 2022 direct final rule, the commenters noted that Michigan had not provided an estimate of the air emissions from Rule 291 implementation as part of the SIP submittal. In response to this comment, Michigan supplemented its submittal with emissions data from the Michigan Air Emissions Reporting System (MAERS). Michigan's supplemental submittal provided estimates of emissions that have resulted from the application of each rule exemption including the exemptions that Rule 291 covers. The submittal contained actual emissions data submitted to EGLE according to various recordkeeping and reporting requirements of its rules and air permitting program. The submittal demonstrated that many of the exemptions would result in very low levels of emissions that are inconsequential to the overall air permitting program's ability to comply with the CAA and its implementing regulations for minor sources at 40 CFR 51.160–51.164.

The commenters have taken issue with the use of MAERS data to support the conclusion that these emissions are inconsequential but have not disputed the accuracy of the supplied data. EPA believes EGLE has supplied information that adequately illustrates the emissions that would result from implementation of the Rule 291 exemptions in conjunction with the already approved air permit exemptions. Because Michigan provided actual emissions information, not hypothetical projections, EPA has confidence that approval of the Rule 291 exemptions would not result in a consequential increase in unpermitted emissions that would otherwise interfere with Michigan's ability to protect the NAAQS.

Comment: The commenters are concerned that the new exemptions could lead to new nonattainment areas for $PM_{2.5}$. The commenters speculate that EPA will likely designate at least three new nonattainment areas in Michigan for the new annual $PM_{2.5}$ standards and that creating new exemptions in the minor NSR program for $PM_{2.5}$ precursors will only exacerbate the problem.

EPA Response: Under section 110(a) of the Act, each State is mandated to adopt and submit to EPA a plan which provides for implementation, maintenance, and enforcement of NAAQS within such State. EGLE has developed attainment strategies to address its nonattainment areas, which include a combination of source-specific air pollutant reduction plans and maintenance of existing attainment areas. As EPA demonstrated in its approval of the 2015 ozone standard redesignation to attainment for the Detroit area, the improvement in air quality with respect to ozone was due to Michigan and EPA programs that reduced NO_X and volatile organic compounds (VOC) emissions. 88 FR 32594 (May 19, 2023). These control measures include more protective vehicle emissions standards, nonroad engine emissions standards, and programs to reduce emissions from power plants. For the Detroit area, the past 20-plus years have seen a substantial decrease in ozone concentrations, with additional emission reductions expected to occur in the future. 87 FR 14210 (March 14, 2022).

It is worth noting that minor sources are not required to conduct an air quality analysis or install Best Available Control Technology (BACT) or Lowest Achievable Emissions Rate (LAER) control measures for each proposed change under the PSD and nonattainment NSR regulations found at 40 CFR 51.166 and 51.165, respectively. Neither EPA's regulations at 40 CFR 51.160–51.164 nor the CAA require that State minor NSR programs include requirements for BACT, LAER, or an air quality analysis as a prerequisite for obtaining a preconstruction permit for minor sources. This is in recognition of the ubiquitous nature of such sources and to ensure the State's resources are preserved for larger sources with the greatest potential impact on air quality. While States are not prohibited from including such provisions in their SIPs, EGLE has not proposed, and EPA has not approved, such provisions in the Michigan SIP. Accordingly, under the SIP, without the new exemptions, sources of $PM_{2.5}$ emissions that would otherwise qualify for the new exemptions would generally not be required to conduct a complex air quality analysis to demonstrate that their emissions do not significantly impact nearby $PM_{2.5}$ monitors, nor be required to implement additional measures beyond those required by Rule 285 and 291.

Except under rare circumstances, EPA believes the low emissions from those projects are so inconsequential to compliance with NAAQS and the ability for EGLE to maintain reasonable further progress that project-specific ambient air quality demonstrations are not necessary. EGLE, as the State permitting authority, has the discretion to require an air quality analysis or impose other

control measures as necessary in the rare situations where it determines that a specific source may be causing or contributing to a violation of the NAAQS, regardless of whether the source relied on an air permit exemption to avoid permitting. In addition, EPA has enforcement authority under sections 113 and 114 of the Act to require such a demonstration as necessary. As already discussed, the air permit exemptions require the facility to adequately keep records of its emissions to ensure that they do not exceed the air permit exemption thresholds.

Comment: The commenters assert that Michigan should not rely on the minor NSR program applicable in Indian country (Tribal Minor NSR Rule) as the basis for establishing de minimis emissions thresholds for its air permit exemptions.[3]

EPA Response: While Michigan relied on a similar approach to that EPA used to develop the Tribal Minor NSR Rule's thresholds when developing the de minimis thresholds in Rule 291, the State did not exclusively rely on the Tribal Minor NSR Rule's approach. As explained in Michigan's supplemental submittal, the Tribal Minor NSR Rule is simply one of many sources of thresholds ultimately used to draft the thresholds in Rule 291. Michigan also relied on EPA modeling guidance, regulatory significance emissions rates, Michigan's existing permitting policies and guidance, and decades of experience using, creating, and evaluating exemptions in Michigan's NSR program. Moreover, EPA has previously determined that the approach EPA took in developing the thresholds in the Tribal Minor NSR Rule is appropriate for establishing such thresholds in SIPs. *See, e.g.,* 86 FR 31932 (June 16, 2021) (approving certain NSR permitting exemptions for the ADEQ's portion of the Arizona SIP).

Similar to the approach EPA followed for the Tribal Minor NSR Rule and Arizona SIP, EGLE conducted a source distribution analysis using data from MAERS and the State's database of staff reports for title V permits. Through this analysis, EPA estimates that the percentage of emissions that would be exempt from minor NSR under Rule 291's thresholds would be less than 0.1 percent for each regulated NSR pollutant except for VOC, which would be about 0.8 percent. This analysis demonstrates that sources with emissions below the proposed minor NSR thresholds in Rule 291 will be inconsequential to attainment and maintenance of the NAAQS.

While the proposed thresholds apply to individual units and not groups of units, Michigan's rules implementing the PSD and nonattainment NSR significance rates, as well as Michigan R 336.1278(1)(b), would serve as a backstop for projects with multiple emissions units. Under those provisions, projects involving multiple units must sum up emissions from all affected units to determine whether the thresholds for PSD or nonattainment NSR permitting are exceeded. As already stated, the exemptions in R 336.1280 to R 336.1291 do not apply to projects that are subject to PSD or nonattainment NSR permitting requirements.

Comment: The commenters would like EPA to consider the potential cumulative impact of multiple projects relying on the air permit exemptions.

EPA Response: As already discussed, EGLE has the discretion to conduct an air quality analysis if it believes that there may be an impact on the NAAQs or PSD increments from a planned or existing activity. The commenters' main argument is that an unlimited number of sources whose impacts are less than the SILs could cumulatively cause a violation of the NAAQs or increments. However, Michigan's existing SIP already requires that major sources and sources that may cause impacts that would exceed the SILs or cause a violation of the NAAQs or increments must conduct an air quality analysis before a preconstruction permit may be issued. Further, as part of their statutory obligations, EPA and EGLE review data from air quality monitors to determine whether individual sources or groups of sources are substantively impacting air quality in certain areas. Based on the results of those reviews, EPA and EGLE have the discretion to require targeted actions that may include, but are not limited to, a comprehensive air quality modeling demonstration, source-specific control measures, or a revision of the SIP, among others.

Comment: The commenters assert that the MERPs, modeling protocol, model inputs, and model results were not provided with Michigan's supplemental submittal and thus were not available for public comment. According to the commenters, EPA is therefore required to re-propose its action and make the MERPs, modeling protocol, model inputs, and model results available for public comment before relying on them.

EPA Response: EGLE's supplemental submittal was made available for public comment by EPA. In its supplemental submittal, EGLE provided emissions data from MAERS in addition to its MERPs analysis. With respect to the MERPs analysis, EGLE stated it completed the analysis following formulas and procedures contained in an April 30, 2019, EPA guidance document addressing the subject, and utilizing data from EPA's MERPs website. The submittal noted that further details of the analysis could be provided upon request.

Significantly, EGLE provided data on emission units and pollutant levels for various exemptions demonstrating the negligible emissions that would be expected from the Rule 291 exemptions. EGLE's supplemental submittal included MAERS emissions data for all Michigan air permit exemptions including Rule 291 exemptions. While the information EGLE provided on its MERPs analysis provides additional support for the exemptions, the additional information was not needed to satisfy the Act's minimum requirements for minor NSR program submittals. Most importantly, the information EPA relied upon for today's final action was made available during the public comment period.

Comment: EPA should not draw conclusions about the performance of the new exemptions based on sources that have been ''violating the SIP'' during the period where Michigan's State rules contained the new, proposed exemptions but the approved SIP did not (known as the ''SIP gap'').

EPA Response: The existence of a SIP gap in a particular SIP is not uncommon due in large part to the often-lengthy procedural requirements associated with approving new State rules into the SIP. The commenters correctly point out that until the new exemptions are approved into the Michigan SIP, State actions implementing those provisions are not federally enforceable. However, the commenters appear to misunderstand the intent of Michigan's inclusion in its submittal of emissions and other data related to its implementation of the SIP gap exemptions. Michigan provided emissions information from existing sources that utilized those exemptions to satisfy State requirements to address concerns that it had not sufficiently explained how implementation of the new exemptions could impact future compliance with NAAQS. EPA considers the information Michigan provided as an illustration of how the exemptions would be implemented in practice and the potential impacts from their implementation. As demonstrated in Michigan's submittal, the projected

[3] The commenters also object to EPA's redesignation of the Detroit area to attainment for the 2015 ozone NAAQS. *See* 88 FR 32594 (May 19, 2023). EPA is not addressing this comment as it is outside the scope of this action.

actual total emissions from the Rule 291 exemptions would be inconsequential compared to the total tons per year emitted from all the exempted units. There is no evidence that the data EGLE provided is incorrect.

Comment: The commenters assert that annual PTE limitations may not sufficiently protect short-term NAAQS. According to the commenters, an annual PTE is not more restrictive than a short-term PTE with respect to short term spikes in emissions, which is a concern for short term NAAQS such as the 8-hour ozone standard.

EPA Response: We disagree with the notion that one must have short-term PTE limits in a minor NSR SIP to protect short-term NAAQS such as the 8-hour ozone standard. While sources may have variability in their hourly or daily emissions, EPA has generally found that annual de minimis thresholds in SIPs are sufficient to ensure that only those sources with inconsequential emissions are exempted from rigorous permitting requirements, including an air quality analysis. For this reason, EPA does not require air quality analyses for pollutants whose PTE in tons per year is not ''significant'' or modifications that would not result in a ''significant'' net emissions increase in tons per year. *See* 40 CFR 52.21(m).

EPA and Michigan define PTE similarly: the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. *See* 40 CFR 51.165(a)(1)(iii), 40 CFR 51.166(b)(4), 40 CFR 52.21(b)(4), and Michigan R 336.1116(n), R 336.2801(hh) and R 336.2901(z). In determining the PTE of an emission unit seeking to utilize the Rule 291 exemptions, federally enforceable restrictions on operations or the use of air pollution control equipment are not considered since the emission unit does not have a permit. The commenters' assertion that a short-term spike in emissions could impact a short-term NAAQS does not take into account that the short-term spike in emissions would have already been factored into the determination of the emission unit's annual PTE and whether it could utilize the Rule 291 air permit exemptions. This is because there would be no other practically enforceable limit such as would be contained in a permit to restrict the emission unit's PTE.

A PTE or an emissions increase is ''significant'' if it equals or exceeds any of the emission rates specified in 40 CFR 51.166(b)(23)(i) and 40 CFR 51.165(a)(1)(x)(A) for attainment and nonattainment areas, respectively. *See also* Michigan R 336.1119(e), R 336.2801(qq) and R 336.2901(hh). Because these values are expressed as a rate of emissions in tons per year, EPA often refers to each value as a ''significant emissions rate.'' Significant emissions rates are premised on the foundational legal principles for de minimis levels as laid out by the D.C. Circuit Court of Appeals in *Alabama Power Co.* v. *Costle.* 81 FR 68120 (October 3, 2016) (citing 636 F.2d 323, D.C. Cir. 1979).

It is worth noting that significant emissions rates for the NSR program are not differentiated by the averaging times of the NAAQS applicable to some of the listed pollutants. Although short-term NAAQS for ozone, SO_2, carbon monoxide, particulate matter, and nitrogen dioxide have been promulgated for many years, EPA has not promulgated alternate ''short-term'' significant emissions rates for those standards. In so doing, EPA continues to find the significant emissions rates expressed in tons per year to be adequate for screening for sources or projects that could threaten the NAAQS, regardless of the standard's averaging time. Notably, these significant emissions rates are much greater than the de minimis thresholds listed in Rule 291 suggesting that the Rule 291 thresholds would be more protective of short-term and annual NAAQS than the significant emissions rates.

In support of their comments, the commenters cite a non-binding EPA memorandum that provided guidance to State, local, and tribal governments for the development of SIPs and tribal implementation plans for areas designated as nonattainment for the primary 2010 NAAQS for SO_2.[4] In that guidance, EPA observed that it may be possible in specific cases for States to develop control strategies for their nonattainment areas that account for variability in l-hour emissions rates through emission limits with averaging times that are longer than 1 hour, using averaging times as long as 30 days, but still provide for attainment of the 2010 SO_2 NAAQS. As explained in the memorandum, the guidance discussed the CAA statutory requirements that air agencies need to address when implementing the 2010 SO_2 NAAQS in areas designated as nonattainment for the 2010 SO_2 standard. Specifically, it provided recommendations for air agencies to consider as they developed plans to satisfy the requirements of sections 172, 175A, 191, and 192 of the CAA to show future attainment and maintenance of the 2010 SO_2 NAAQS. Importantly, this guidance did not pertain to and was not intended for the development of permitting SIPs under section 110 of the Act and 40 CFR 51.160–164 as relevant for this action. We therefore disagree with the commenters' suggestion that this guidance advocates for inclusion of short-term PTE limits in SIPs that are submitted to satisfy the minor NSR programs under 40 CFR 51.160–164.

Comment: The commenters request that Michigan develop more stringent exemption thresholds in nonattainment areas.

EPA Response: EPA's longstanding interpretation of section 110(l) of the Act is that we may approve a SIP revision so long as emissions to the air are not increased, thereby preserving ''status quo air quality.'' *See,* for example, 89 FR 82561 (October 11, 2024). In this context, we interpret the word ''interfere'' as used in section 110(l) to mean that the SIP revision does not hamper, frustrate, hinder, or impede any applicable CAA requirements. As already stated, Michigan has submitted a section 110(l) analysis which sufficiently demonstrates that the proposed exemptions would not interfere with attainment of the NAAQS or reasonable further progress in nonattainment and maintenance areas.

The commenters take issue with Michigan's explanation that implementing an exemption threshold that varies with attainment status would be difficult, ''particularly with an installation-based permitting program.'' Although a variable, location-based, exemption threshold may be desirable, EPA believes such a variable threshold is unnecessary and would pose significant implementation challenges in the minor NSR program for sources with inconsequential emissions. As the commenters acknowledge, areas routinely come in and out of nonattainment as air quality worsens and improves, respectively, which could lead to unnecessary business uncertainty and confusion for small businesses as different exemption thresholds could apply at various times from project conception to implementation. EPA believes the existing permitting thresholds for nonattainment areas in conjunction with the exemptions that EPA is approving today would adequately protect air quality in nonattainment areas.

We also note that the exemptions Michigan has proposed, and EPA is approving, would generally not change the status quo with respect to emissions

[4] Available in the docket and at *https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

and air quality control requirements for the emissions units that would qualify for the exemptions. This action does not alter the permitting thresholds or requirements that EPA has approved into the Michigan SIP for sources and projects located in nonattainment areas. As already discussed, this action would merely free up State resources so that they can be used to focus on those emissions units and projects that would have the greatest potential impact on attainment and maintenance of the NAAQS.

This action also does not relieve Michigan of its statutory obligation to ensure sources in its jurisdiction do not cause or contribute to a violation of the NAAQS or interfere with reasonable further progress in nonattainment and maintenance areas. Additionally, under section 110(k)(5) of the Act, EPA retains authority to order a SIP revision if it subsequently determines that exempt sources in Michigan are interfering with attainment of the NAAQS in an area. 42 U.S.C. 7410(k)(5).

IV. What action is EPA taking?

EPA is approving revisions to the Michigan SIP that EGLE submitted on March 8, 2022. EPA approves into the Michigan SIP at 40 CFR 52.1170 the following regulations: Michigan R 336.1285(2)(oo) ''Permit to install exemptions; miscellaneous'' and R 336.1291 ''Permit to install exemptions; emission units with ''de minimis'' emissions.''

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

VI. 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, 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 subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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 (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 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 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 January 20, 2026. 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, Ammonia, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 28, 2025.

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 (c) is amended under ''Part 2. Air Use Approval'' by revising the entry for ''R 336.1285'' and by adding a new entry for ''R 336.1291'' after the entry for ''R 336.1290'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

[5] 62 FR 27968 (May 22, 1997).

EPA APPROVED-MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 2. Air Use Approval				
*	*	*	*	*
R 336.1285	Permit to install exemptions; miscellaneous.	1/2/2019	11/18/2025, 90 FR [Insert **Federal Register** page where the document begins].	
*	*	*	*	*
R 336.1291	Permit to install exemptions; emission units with ''de minimis'' emissions.	1/2/2019	11/18/2025, 90 FR [Insert **Federal Register** page where the document begins].	
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[FR Doc. 2025–20150 Filed 11–17–25; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2024–0288; FRL–12047–02–R2]

Air Plan Approval; New Jersey; Northern New Jersey and Southern New Jersey Counties' Second 10-Year Limited Maintenance Plan for the 2006 24-Hour $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the limited maintenance plan (LMP) for the 2006 $PM_{2.5}$ national ambient air quality standard (NAAQS) for the New Jersey portion of both of New Jersey's multi-state maintenance areas: the Northern New Jersey portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT (Northern New Jersey) maintenance area and the New Jersey portion of the Philadelphia-Wilmington, PA–NJ–DE (Southern New Jersey) maintenance area. This LMP was submitted on July 6, 2023, and supplemented on June 6, 2024, by the New Jersey Department of Environmental Protection (NJDEP). The plan addresses the second 10-year maintenance period for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, known as $PM_{2.5}$. This action is being taken in accordance with the requirements of the Clean Air Act (CAA). The EPA is approving New Jersey's LMP submission for the Northern New Jersey and Southern New Jersey maintenance areas because it provides for the maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS through the end of the second 10-year portion of the maintenance period. In addition, the EPA finds adequate and is approving the LMP because it meets the appropriate transportation conformity requirements. EPA proposed to approve this action on July 31, 2025.

DATES: This final rule is effective on December 18, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2024–0288 at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Controlled Unclassified Information (CUI) (formerly referred to as Confidential Business Information (CBI)) 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 electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, New York, New York 10007–1866, telephone number: (212) 637–3382, email address: *banon.ysabel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background and Purpose

Hereafter, ''Northern New Jersey'' means the New Jersey portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT maintenance area (for the 2006 24-hour $PM_{2.5}$ NAAQS), which is comprised of Bergen, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties, and ''Southern New Jersey'' means the New Jersey portion of the Philadelphia-Wilmington, PA–NJ–DE maintenance area (for the 2006 24-hour $PM_{2.5}$ NAAQS), which is comprised of Burlington, Camden, and Gloucester Counties. On December 14, 2009, EPA designated the Northern New Jersey and Southern New Jersey areas as nonattainment for the 2006 $PM_{2.5}$ NAAQS (74 FR 58688). Subsequently, on September 4, 2013, EPA redesignated the Northern New Jersey and Southern New Jersey areas to attainment for the 2006 $PM_{2.5}$ NAAQS (78 FR 54396) and approved the associated maintenance plan into the New Jersey State Implementation Plan (SIP).

On July 31, 2025, EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Jersey (90 FR 35996). The NPRM proposed approval of the State's second, 10-year LMP for the 2006 24-hour $PM_{2.5}$ standard for the Northern New Jersey and Southern New Jersey areas. The formal SIP revision was submitted by NJDEP on July 6, 2023, and supplemented on June 6, 2024. EPA is approving the plan because it meets all applicable requirements under CAA sections 110 and 175A. We also find the LMP to be adequate as it pertains to transportation conformity requirements. Other specific requirements of the LMP and the rationale for EPA's action are explained in the NPRM and will not be restated