

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Environment, Great Lakes and Energy

2. Bureau:

Air Quality Division

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Part 8. Emission Limitations and Prohibitions – Oxides of Nitrogen

5. Rule numbers or rule set range of numbers:

R 336.1801 - R 336.1818, R 336.1821 - R 336.1826, R 336.1830 - R 336.1834

6. Estimated time frame:

12 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The Part 8 Rules were developed to address federal regulations referred to as the “NOx SIP Call” and the Clean Air Interstate Rule (CAIR), and to create an emissions trading program to reduce overall nitrogen oxides (NOx) concentrations for incorporation into Michigan’s State Implementation Plan (SIP). In 2015, implementation of the Cross State Air Pollution Rule (CSAPR), another federal regulation, replaced the federal CAIR. As such, CAIR references need to be removed from several Part 8 Rules. The trading program in our Part 8 Rules is no longer applicable and must be removed. Additionally, the NOx SIP Call requirements for a small subset of sources must be updated.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

Section 5503(a) of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), gives the department the authority to promulgate rules. Section 5512(1) of Part 55 of the NREPA, states the department shall promulgate rules for a variety of purposes including controlling air pollution and complying with the Clean Air Act.

In addition, the Administrative Procedures Act, 1969 PA 306, as amended, in 2018 was updated to include the Environmental Rule Review Committee, which oversees EGLE's rulemaking. Section 65 of Act 306 explains the makeup and terms of the Committee, and Section 66 of Act 306 explains the Committee's responsibilities during the rulemaking process.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

Sections 5503 and 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Section 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, requires the department to promulgate rules for, among other things, the purposes of controlling air pollution, complying with the Clean Air Act, and establishing suitable emission standards. The rules in this submittal are necessary to address these requirements by limiting NOx emissions and addressing the NOx SIP Call.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The current version of the rules conflicts with federal regulations. The current rules reference a revoked federal regulation (CAIR). The proposed changes will correct those conflicts and address other obligations the State of Michigan has with regard to another set of federal regulations (NOx SIP Call).

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The subject matter of the rules is in the federal regulations. The proposed rules will clarify applicability to the current federal regulations.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes, the rules are listed in the department's annual regulatory plan as rules to be processed for the current year.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

These rule changes will not exceed national or regional compliance requirements or other standards. These changes address compliance with federal regulations.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The proposed rules are drafted with input from stakeholders. Portions of the rules addressing the NOx SIP Call are written with input and feedback from affected parties. CSAPR rules were reviewed by a workgroup consisting of subject facilities.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The rules being modified were added/edited at different times ranging from December 2002 to May 2009. Since then, the federal regulations upon which these rules were based have changed. The proposed changes will update Michigan's rules accordingly.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

Yes. The federal CAIR program, which mandated a trading program, is no longer in effect.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No