

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

MOAHR-Rules@michigan.gov

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 336.1846

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.

Part 8. Emission Limitations and Prohibitions – Oxides of Nitrogen of the Michigan Air Pollution Control Rules (MAPCR) contains rules developed to fulfill federal Clean Air Act, 42 U.S.C. 7401 et seq (CAA) requirements for sources of oxides of nitrogen (NO_x). Michigan must create new rules to address a change to a moderate classification in nonattainment areas under provisions of the National Ambient Air Quality Standards (NAAQS). These rules are often referred to as NO_x “Reasonably Available Control Technologies” (RACT). For past NAAQS, the Department of Environment, Great Lakes, and Energy (EGLE) was not required to promulgate RACT rules for NO_x sources in the nonattainment areas established under those standards. With the establishment of a new standard and a new classification, Michigan must create RACT rules to align with requirements of Section 182(b)(2) of the CAA. EGLE must promulgate new rules setting emission standards and operational requirements for certain types of NO_x emission sources for the nonattainment areas.

Additionally, existing Part 8 Rules addressing the “NO_x State Implementation Plan (SIP) Call” federal program will be modified to address minor improvements suggested by representatives of the United States Environmental Protection Agency (EPA).

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 CAA.

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

MCL 324.5503(a) and MCL 324.5512(1).

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

MCL 324.5512(1) requires the department to promulgate rules for, among other things, the purpose of controlling or prohibiting air pollution, complying with the CAA, and establishing suitable emission standards. The rules in this submittal are necessary to address these requirements by limiting NOx emissions and addressing the requirements of Section 172 of the CAA as it pertains to ozone nonattainment areas.

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 rules conflict with the federal regulations because they do not sufficiently address requirements of federal regulations. The proposed rules will update the emission standards as required by the CAA under Section 172(c)(1) for this standard's respective moderate nonattainment areas. The proposed rule changes addressing the NOx SIP Call, upon SIP approval, will remove the applicability of the NOx SIP Call program to Michigan, thus removing the duplicity.

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 not currently contained in any handbook, manual, instructional bulletin, form with instructions, or operational memoranda.

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 and additions are necessary to fulfill federal regulatory obligations. The proposed rules do not exceed any regulations, compliance requirements, or other standards adopted by the state, regional, or federal level.

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 have been drafted with input from stakeholders and address their concerns as much as possible while still complying with the requirements outlined in the CAA. The proposed rules have been shared with stakeholders consisting of environmental consultants, facility environmental staff, and environmental groups.

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 last evaluation of the rules was in 2022. Since then, changes to Michigan's ozone nonattainment areas have prompted Michigan to propose new rules to meet CAA requirements. Also, the EPA has provided feedback on the 2022 evaluation which requires additional changes to accomplish the goals of that action.

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?

No, there are not any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules.

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