

**Michigan Office of Administrative Hearings and Rules**  
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

**1. Agency Information**

**Agency name:**

Environment, Great Lakes and Energy

**Division/Bureau/Office:**

Air Quality Division

**Name of person completing this form:**

Cari DeBruler

**Phone number of person completing this form:**

517-899-5275

**E-mail of person completing this form:**

DEBRULER.C@michigan.gov

**Name of Department Regulatory Affairs Officer reviewing this form:**

Dale Shaw

**2. Rule Set Information**

**MOAHR assigned rule set number:**

2023-13 EQ

**Title of proposed rule set:**

Part 8. Emission Limitations and Prohibitions-Oxides of Nitrogen

**3. Purpose for the proposed rules and background:**

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 (NOx). 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 NOx “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 NOx 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 NOx emission sources for the nonattainment areas.

Additionally, existing Part 8 Rules addressing the “NOx 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).

**4. Summary of proposed rules:**

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The Part 8 proposed rule set contains rules developed to fulfill federal Clean Air Act, 42 USC 7401 et seq (CAA) requirements for sources of oxides of nitrogen (NO<sub>x</sub>). 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<sub>x</sub> “Reasonably Available Control Technologies” (RACT). For past NAAQS, EGLE was not required to promulgate RACT rules for NO<sub>x</sub> 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<sub>x</sub> emission sources for the nonattainment areas.

Additionally, existing Part 8 Rules addressing the “NO<sub>x</sub> State Implementation Plan (SIP) Call” federal program will be modified to address minor improvements suggested by representatives of the United States Environmental Protection Agency.

**5. List names of newspapers in which the notice of public hearing was published and publication dates:**

Lansing State Journal - published April 22, 2024.

Oakland Press - published April 22, 2024.

The Mining Journal - published April 22, 2024.

**6. Date of publication of rules and notice of public hearing in Michigan Register:**

5/1/2024

**7. Date, time, and location of public hearing:**

5/22/2024 01:00 PM at In Person: Ford Conference Room, 2nd Floor, South Tower, Constitution Hall, 525 West Allegan Street, Lansing, MI 48933 , Virtual: <https://bit.ly/3wZt1VQ> To join by phone: 636-651-3142, conference code 374288

**8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:**

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1440>

**9. List of the name and title of agency representative(s) who attended the public hearing:**

Tracey McDonald – Air Quality Division (AQD)

Marissa Vaerten – AQD

Cari DeBruler – AQD

Thomas Shanley – AQD

Annette Switzer – AQD

John Olson – AQD

Kaitlyn DeVries – Environmental Support Division (ESD)

Jim Ostrowski – ESD (Virtual)

Dale Shaw – Information Management Division (IMD)

Aimee Crouch - IMD

**10. Persons submitting comments of support:**

None.

**11. Persons submitting comments of opposition:**

None.

**12. Persons submitting other comments:**

Eric Svingen, David Lifland (as represented under Eric Svingen's written comments as LD), Kathleen D'Agostino, and Kathleen (Katie) Mullen representing the United States Environmental Protection Agency (USEPA)

Caroline Liethen, representing the Michigan Manufacturers Association (MMA)

Kathryn Ross, representing Consumers Energy

Michele Buckler, representing Detroit Diesel Corporation

**13. Identify any changes made to the proposed rules based on comments received during the public comment period:**

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	Eric Svingen, USEPA		The comment stated that federal regulations which are not approved into the State Implementation Plan (SIP) should not be used to exempt sources from SIP requirements.	Language was removed that eliminates exemptions of R 336.1801 for sources subject to Federal Implementation Plans (FIPs).	R 336.1801 (11)(a)
2	David Lifland, USEPA		The phrase "Michigan Fine Grid zone" is undefined in R 336.1818.	The phrase was previously defined under R 336.1803 for other rules. R 336.1803 was expanded to include applicability to R 336.1818.	R 336.1803
3	David Lifland, USEPA		Citation in draft rule is incorrect. Change reference from R336.1802 (2) to R 336.1802 (4).	Suggested change from R336.1802 (2) to R 336.1802 (4) was made.	R 336.1803 (c)

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4	David Lifland, USEPA		NOx account administrator is no longer a relevant term.	There is one scenario that still could have an account administrator, so wording was added to clarify.	R 336.1803(f) and (i)
5	Eric Svingen, USEPA		Definition is not needed if related use is removed.	Definition of "Ozone federal implementation plan" deleted.	R 336.1803 (v)
6	Eric Svingen, USEPA		Reference to FIP is not necessary if FIP language is removed.	FIP language and language referencing federal regulations currently stayed, was removed.	R 336.1810 (2)(a) R 336.1810 (3) R 336.1810 (3)(d) R 336.1810 (5)
7	Eric Svingen, USEPA		FIP language should be removed.	FIP language was removed.	R 336.1810 (2)(d)(iv)

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8	Katie Mullen, USEPA		A date in the draft has passed and is unnecessary.	The date March 1, 2024 has passed and is unnecessary, therefore it was removed.	R 336.1841 (2)(a)(i), R 336.1841 (4), R 336.1842 (2)(a)(i), R 336.1842 (4), R 336.1842 (4)(b), R 336.1843 (2)(a)(i), R 336.1843 (4)(a), R 336.1844 (2)(a)(i), R 336.1844 (4), R 336.1844 (5), R 336.1845 (b), R 336.1845 (e), R 336.1846 (2)(b)(i), & R 336.1846 (3)
9	Katie Mullen, USEPA		Both conditions (applicability to a federal regulation and establishing the federal regulation is equal to or more stringent than the rule requirements) should be met.	Uses of “or” were changed to “and” thereby making both conditions necessary, and additional language was added to make it clearer that there is no discretion about equivalency.	R 336.1841 (3)(c), R 336.1842 (3)(b), & R 336.1843 (3)(a)

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10	Katie Mullen, USEPA		FIP language should be removed.	FIP language was removed.	R 336.1841 (3)(e) R 336.1842 (3)(c) R 336.1843 (3)(d) R 336.1844 (3)(j)
11	Katie Mullen, USEPA		Alternate wording was suggested to broaden what engine certification maintenance could be required (as appropriate) rather than what would be minimally acceptable.	Suggested alternate wording was utilized. This change clarifies a source must include but is not limited to listed requirements to show maintenance of engine certification.	R 336.1841 (5)(a)
12	Katie Mullen, USEPA		Testing frequency was not sufficient.	The testing frequency was modified based on additional USEPA input.	R 336.1841 (5)(b)(iii)(A) R 336.1842 (7)(a) R 336.1843 (6)(a) R 336.1844 (6)(c)(i)
13	Katie Mullen, USEPA		The use of a representative performance test for multiple identical emission units would need to be approved by the USEPA.	This option was removed from the rule.	R 336.1841 (5)(b)(iii)(A), R 336.1842 (7)(a), R 336.1843 (6)(a), & R 336.1844 (6)(c)(i)

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14	Kathryn Ross, Consumers Energy		Manufacture date of source is not always known.	Wording was added to through addition of R 336.1841(6)(b)(iv) to make requirement only if manufacture date is available for non-certified engines.	R 336.1841 (6)(a) and (c)
15	Katie Mullen, USEPA		Periodic reporting is required per the Clean Air Act.	A requirement to report every 3 years was added.	R 336.1841 (7), R 336.1842 (9) R 336.1843 (8) R 336.1844 (8)
16	Caroline Liethen, MMA		The comment suggested a different wording for the event that causes the contingency measure.	After consultation with the USEPA, the event language was reworded.	R 336.1841 (8) R 336.1842 (10)(b) R 336.1844 (9)
17	Caroline Liethen, MMA		Typographical error – repeated words.	Extra words were eliminated.	R336.1842(2) (a)
18	Caroline Liethen, MMA and Kathryn Ross, Consumers Energy		Typographical error – incorrect source type named.	“Boiler” was erroneously named. Turbine was inserted for Rule 336.1843 and emission unit for Rule 336.1844.	R336.1843(6) (b)(ii) and (iii) R336.1844(6) (c)(ii) (B) and (C)

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19	Kathryn Ross, Consumers Energy		Wording implies the company needs to get USEPA approval. The company needs state approval only.	Requirement for the company to request USEPA approval was removed to clarify that the company is not the one who submits alternative RACT request to USEPA for approval into the SIP, the state does as required under R 336.1845(d).	R 336.1845
20	Katie Mullen, USEPA		Add the qualifier “federally enforceable” to describe permits/orders.	Phrase was added, as appropriate.	R 336.1845 (a)
21	Kathleen D’Agostino, USEPA		Timeframe is unnecessary and should be removed.	AQD staff want the timeframe to ensure timely response, but the wording was changed to only be a proposal for the application and was therefore shortened in length from 180 days to 60 days.	R 336.1845 (a)
22	Caroline Liethen, MMA and Kathryn Ross, Consumers Energy		Confusing wording.	Reworded and corrected to more clearly require proper documentation.	R 336.1845 (a)(iv)
23	Kathryn Ross, Consumers Energy		Unnecessary language.	The reference to RACT rules was removed due to a lack of value.	R 336.1845 (a)(v)
24	Kathryn Ross, Consumers Energy		Unnecessary language.	The unnecessary phrase was removed.	R 336.1845 (b)



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25	Kathryn Ross, Consumers Energy		Unnecessary language.	The subrule was reworded to simplify and clarify when a public hearing was required.	R 336.1845 (c)
26	Kathryn Ross, Consumers Energy		Unnecessary language.	Other rules address issuance and requirements of permits; therefore, language was removed.	R 336.1845 (d)
27	Kathryn Ross, Consumers Energy		Unnecessary language.	Redundant and unnecessary language was removed.	R 336.1845 (e)
28	Kathryn Ross, Consumers Energy and Kathleen D'Agostino, USEPA		Unnecessary language and timeframes.	Unnecessary language was removed. Proposed maximum timeframe language was removed because it will be addressed through the RACT application and proposal documentation.	R 336.1845(f)
29	Kathryn Ross, Consumers Energy		Confusing language.	Subrule (2)(c) was eliminated and moved to part of subrule (2) and subrule (2)(a).	R 336.1846 (2) R 336.1846 (2)(a) R 336.1846 (2)(c)
30	Kathleen D'Agostino, USEPA		Implies that only existing major sources are required to address the rule.	Wording modified to clarify that new major sources in the nonattainment area are also required to address the rule.	R 336.1846 (2)(b)(i)

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31	Kathryn Ross, Consumers Energy and Katie Mullen, USEPA		Timeframes are unnecessary.	Maximum timeframe language was removed in lieu of a reliance on times described in the RACT proposal.	R 336.1846 (8)
32	David Lifland, USEPA		The words "combustion" and "combination" were mixed up.	The words "combustion" and "combination" were switched to make correction.	R 336.1803 (aa)(iii)(A)- (B)

**14.Date report completed:**

11/1/2024