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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1092; FRL–9982–97—Region 5]

Air Plan Approval; Michigan; Minor New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain changes to the Michigan State Implementation Plan (SIP). This action relates to changes to the Permit To Install (PTI) requirements of Part 2 of the Michigan Administrative Code (Part 2 Rules). Changes to the Part 2 Rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017.

DATES: This final rule is effective on October 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–1092. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 either through *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 Rachel Rineheart, Environmental Engineer, at (312) 886–7017 before visiting the Region 5 office.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

A. What state submissions does this rulemaking address?

The State of Michigan's minor source PTI rules are contained in Part 2 of the Michigan Administrative Code. EPA last approved changes to the Part 2 rules in 1982. The Michigan Department of Environmental Quality (MDEQ) has submitted several Part 2 revision packages since that time; however, EPA has not taken a final action on any of the submittals. The following table provides a summary of the various state submittals with the most recent version of each section of the Michigan Rule highlighted in bold.

Submittal	State effective date	Submittal date	Rules submitted 336.1xxx
1	04/20/1989	11/12/1993	240, 241.
	04/17/1992		201, 283.
	11/18/1993		278, 279, 280, 281, 282, 284, 285, 286, 287, 288, 289, 290.
2	07/26/1995	05/16/1996	201, 205, **208 (rescinded)**, **209**, 219, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290.
3	12/12/1996	04/03/1998	201a, 205.
4	06/13/1997	08/20/1998	278, 283, 284, 285, 286, 287, 290.
5	07/01/2003	09/02/2003	201, **201a**, 202, **203**, **204**, 205, **206**, 207, **212**, **216**, 219, 240, 241, 278, 278a, **279 (rescinded)**, 281, 282, 284, 285, 287, 289, 299.
6	06/20/2008	03/24/2009	**201**, **202**, **205**, **207**, **219**, **240**, **241**, **278**, 281, 284, 285, 288, **299**.
7	12/20/2016	2/21/2017	**278a**, **280**, **281**, **282**, **283**, **284**, **285**, **286**, **287**, **288**, **289**, **290**.

EPA published a proposed approval of all changes, except the public notice procedures in Michigan R. 336.1205, on August 15, 2017 (82 FR 38651), with a 30-day public comment period. EPA reopened the comment period twice due to missing files in the docket on *regulations.gov*. The comment period was reopened for an additional 30 days on November 2, 2017 (82 FR 50853), and an additional 15 days on January 9, 2018 (83 FR 1003). EPA is taking no action on Michigan R. 336.1205 at this time.

B. Why did the state make these SIP submissions?

Section 110(a)(2)(C) of Clean Air Act (the Act) requires that each SIP include a program to provide for the regulation of construction and modification of stationary sources as necessary to assure that the National Ambient Air Quality Standards (NAAQS) are achieved. Specific elements for an approvable construction permitting plan are found in the implementing regulations at 40 CFR part 51, subpart I—Review of New Sources and Modifications. Requirements relevant to minor construction programs are 40 CFR 51.160–51.164. EPA regulations have few specific criteria for state minor new source review (NSR) programs. Generally, state programs must set forth legally enforceable procedures that allow the state to prevent any planned construction activity that would result in a violation of the state's SIP or a national standard.

The revisions to Part 2 submitted by MDEQ are largely provisions that strengthen the already approved minor NSR program adding greater detail with respect to applicability, required application material, and processing of applications; however, the revisions do include changes to waiver provisions

and the addition of several categories of exemptions from the requirement to obtain a PTI.

II. What is our response to comments received on the proposed rulemaking?

EPA received several comments during the public comment process. EPA received four anonymous comments that were unrelated to the action, and we will not be addressing those comments. EPA received adverse comment on the proposed approval from the Sierra Club, the Great Lakes Environmental Law Center, the Center for Biological Diversity, and the Environmental Law & Policy Center. EPA received a letter from the Environmental Law & Policy Center dated September 14, 2017, and a letter from the Sierra Club, Great Lakes Environmental Law Center, and the Center for Biological Diversity dated September 14, 2017, during the original public comment period. Sierra Club and the Great Lakes Environmental Law Center provided additional comment during the first reopening in a letter dated December 4, 2017. Sierra Club, the Great Lakes Environmental Law Center, and the Center for Biological Diversity provided additional comments during the second reopening in a letter dated January 24, 2018. A summary of the comments received and EPA's response follow.

A. Michigan R. 336.1201a General PTIs

Michigan R. 336.1201a gives the MDEQ the ability to create general PTIs. A general permit is a permit document that contains standardized requirements that multiple stationary sources can use. It may cover categories of emission units or stationary sources that are similar in nature. The purpose of a general permit is to ensure the protection of air quality while simplifying the permit process for similar minor sources. General permits allow the permitting authority to notify the public through one notice that it intends to apply those requirements to any eligible source that seeks coverage under the permit in the future. This minimizes the burden on the reviewing authority's resources by eliminating the need to issue separate permits for each individual minor source within the source type or category covered by the general permit. Use of a general permit also decreases the time required for an individual minor source to obtain a preconstruction permit because the application process is standardized.

Michigan R. 336.1201a allows MDEQ to issue general PTIs for categories of similar emission units or stationary sources. The rule requires the general permits to contain limitations as necessary to assure compliance with applicable requirements, and that limitations on potential to emit be enforceable as a practical matter. The general permits must also identify the criteria by which a stationary source or emission unit may qualify for the permit. Finally, the rule requires MDEQ to provide for public notice of the general permit.

Comment 1: While EPA's Title V permitting rules provide for issuance of general operating permits, the concept of a general construction permit is not consistent with the requirements of Section 110(a)(2)(C) of the Act or 40 CFR 51.160–51.164.

EPA Response: EPA disagrees that the lack of a specific allowance for general permits under the permit program requirements of section 110(a)(2)(C) of the Act precludes the use of general permits for construction as there is no provision that specifically disallows them. In fact, the language in the Act concerning non-major activities simply requires ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' The Act and the implementing regulations at 40 CFR 51.160 are structured to allow the implementing authority flexibility in designing a minor source program that meets the authority's individual needs while assuring protection of ambient air. EPA has a well-established, longstanding position that the use of general permits for construction of minor sources is appropriate under the Act. The January 25, 1995, memorandum ''Options for Limiting Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' the January 25, 1995 memorandum, ''Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules,'' and the April 14, 1998, memorandum, ''Potential to Emit (PTE) Guidance for Specific Source Categories,'' all endorse the use of a general permit program approved into the SIP pursuant to section 110(a)(2)(C) of the Act as a means of effectively establishing limitations on the potential to emit of stationary sources. EPA allows for the issuance of general permits to minor sources under its own Federal Minor NSR Program in Indian Country at 40 CFR 49.156.

Comment 2: The Michigan Rules do not define ''similar stationary sources or emissions units.'' There is no requirement in the rules that, to be similar, source or emission units must have similar emissions and stack parameters. Sources with different stack parameters and emission rates, even though similar sources, could have significantly different impact on air pollutant concentrations. Furthermore, no definition of ''similar source'' can adequately address neighboring sources of air pollution which may cause ambient pollution concentrations at or near the levels of a NAAQS.

EPA Response: We disagree that there is a need to define ''similar stationary sources or emissions units'' in this rule. The identified terms have their common meaning in the context of the rule. In the case of general permits, defining the scope of the stationary source and/or emissions units covered by a particular general permit should be done when establishing the terms of the general permit. All interested parties will have the opportunity to provide input on the appropriateness of the scope of a particular general permit during the public comment period for that permit. The appropriate time to comment is during the public comment period for a particular general permit.

Comment 3: A general permit would not ensure that a specific new or modified source would be prohibited from construction if it would interfere with attainment or maintenance of the NAAQS or interfere with the control strategy. The impact of a source's emissions on air pollutant concentrations is dependent on a myriad of factors including topography, other buildings in the vicinity, background pollutant concentrations, and neighboring sources of pollution as well as stack and plume characteristics.

EPA Response: We disagree. Michigan R. 336.1207, which requires MDEQ to deny an application that would interfere with the attainment or maintenance of a NAAQS, would apply to any general permit issued by MDEQ. There is still an application process for any source wanting coverage under a general permit, and MDEQ does have the authority to deny coverage under a general permit to any applicant. The potential air quality impacts of a general permit should be considered during the development of each general permit. Concerns regarding the adequacy of permit terms or application requirements concerning potential impacts on air quality are more appropriately raised during the public comment period for each general permit developed by MDEQ.

Comment 4: The concept of a general construction (or operating) permit is that one permit can be issued for a source type, and similar sources can request and be granted approval to construct and/or operate under that

permit without having to apply for a new construction permit, thereby avoiding all of the requirements that are part of the application process including public notice and opportunity for comment.

EPA Response: A source must apply for coverage under a general permit, and each general permit must be made available for public comment. EPA does not agree that the general permitting process would allow a source to avoid any requirements of the application process. As noted above, EPA has a well-established position in support of general permits for construction and has determined that the notice and comment required in the establishment of each general permit meets the public notice requirements of 40 CFR 51.161.

B. Michigan R. 336.1202 Waivers of Approval

Michigan R. 336.1202 provides the MDEQ with the authority to grant a waiver from the requirement to obtain a permit prior to commencing construction in certain limited circumstances. The PSD provisions of the Act prohibit commencement of construction without first obtaining the required permit authorizing construction; however, the requirement only applies to major sources, and no such restriction is specified under the minor NSR program requirements set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that limited construction may begin before a permit is issued for minor sources. For example, EPA's October 10, 1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses limited preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued. EPA has established its position that limited waivers are acceptable for true minor sources in previous rulemaking. (See 68 FR 2217 and 73 FR 12893.) As stated previously, the minor NSR provisions at 40 CFR 51.160 require state programs to determine if activities would violate an applicable SIP or national standard and to prevent construction of an activity that would violate an applicable SIP provision or national standard. Michigan R 336.1202(1) requires an application for a waiver be submitted to MDEQ and requires MDEQ to act on the request within 30 days. Construction may not proceed unless the waiver is granted. The rule also indicates that the waiver does not guarantee approval of the required PTI and any construction activity would be at the owner/operator's risk. Michigan R. 336.1202(2) limits the waiver to minor construction activities (*i.e.,* activities not subject to prevention of significant deterioration or nonattainment new source review requirements), activities that are not considered construction or reconstruction under a National Emission Standard for Hazardous Air Pollutants of 40 CFR part 63, and activities that are not considered construction or modification under a New Source Performance Standard of 40 CFR part 61. It is also important to note that the approved Part 2 rules currently included in the Michigan SIP already have an approved waiver provision. The currently approved waiver provision is much broader in scope, and the changes that EPA is approving here narrow that scope bringing the MDEQ provisions in line with other state programs.

Comment 1: The commenters object to EPA's approval of waiver provisions in general and argue that all of EPA's arguments for approval of waiver provisions are flawed and do not in any way justify approval.

EPA Response: EPA has outlined its position on waivers for minor source construction in previous rulemakings, as noted above, and will not be revisiting this established policy in this rulemaking. EPA finds that Michigan R. 336.1202 meets the criteria for approval outlined in those rulemakings. Michigan's rule requires application for a waiver and requires MDEQ to act upon the application for a waiver within 30 days. The waiver provision is limited to non-major construction activities and the applicant must show a delay in construction would result in hardship. Finally, the rule makes it clear that the source may not operate until such time a final permit is issued and that granting a waiver does not obligate MDEQ to issue a final permit.

Comment 2: Michigan R. 336.1202 conflicts with EPA regulations governing minor source review because it would allow a source to circumvent the public participation requirements until after a source or modification is constructed.

EPA Response: EPA's position on limited waiver provisions in minor NSR programs has already been established. As discussed above nothing in 40 CFR 51.161 requires that the required public notice occur prior to the commencement of construction activities for minor sources. MDEQ must still adhere to the SIP approved public notice requirements when issuing a permit.

Comment 3: The Michigan waiver provision conflicts with EPA's regulations governing major source review because it could apply to modified major sources that would otherwise be subject to PSD or nonattainment NSR. Although the Michigan waiver provision states that it does not apply to ''any activity'' that is subject to major source permitting requirements, the definition of ''activity'' under this rule is not consistent with the EPA's aggregation policy. By defining ''activity'' as the ''concurrent and related installation, construction, relocation, or modification of any process or process equipment,'' MDEQ's definition is inconsistent with the much broader policy that EPA has laid out in several policy memos in deciding when projects should be aggregated. Importantly, EPA policy does not require that projects be concurrently constructed to justify two or more projects being related. There are also numerous other factors to take into account to determine if two or more projects are related.

EPA Response: Neither the Act nor current EPA rules specifically addresses the basis upon which to aggregate changes for applicability purposes. Instead, EPA has developed its aggregation policy through statutory and regulatory interpretation and applicability determinations. Current EPA policy is generally guided by our analysis in memos such as the June 17, 1993 ''Applicability of New Source Review Circumvention Guidance to 3M-Maplewood, Minnesota.'' In this memo, EPA outlines criteria that a permitting authority might consider in determining which activities should be aggregated. The guidance suggests that a permitting authority should consider the timing of projects, whether or not changes are technically related or dependent upon one another, and any economic relationship between activities. EPA policy directs permitting authorities to evaluate the timing and relatedness of activities for aggregation. Since MDEQ has not defined either ''concurrent'' or ''related'', we believe the language can be interpreted broadly enough to be consistent with EPA policy. Furthermore, the definition of activity here has no bearing on the definition of project under the state's PSD and major non-attainment NSR program. Applicability for PSD is defined in Michigan's Part 18 rules and applicability for major non-attainment NSR is defined in Michigan's Part 19 rules, and is independent of any applicability criteria established in Part 2. If an activity is subject to the Part 18 or Part 19 requirements either by itself or as part of a larger project, it would be excluded from use of the waiver provisions.

Comment 4: The waiver provision also conflicts with EPA regulations governing new major source review because it could apply to a source that ultimately requests limits on emissions to avoid major source or major modification permitting requirements.

EPA Response: EPA disagrees with the commenter's conclusions. The rule prohibits use of the waiver by sources subject to the state's major construction permitting programs. Any source that intends to take synthetic minor restrictions to avoid major source permitting requirements is major until a permit with enforceable restrictions is issued, and would be disqualified from the use of the waiver. MDEQ has made their position on this issue clear as well. In a public hearing report dated February 20, 2003, which is included in attachment F of the September 2003 submittal, MDEQ outlines how their rules would prevent the use of restrictions that are not part of an enforceable permit or order, thus limiting the waiver to true minors.

Comment 5: The Michigan waiver provision does not meet the requirements of the Act or 40 CFR 51.160(a) because it does not require the source to submit its plans and specifications for approval before MDEQ must act on a request for a waiver. Michigan R. 336.1202 indicates that a source's ''pertinent plans and specifications'' can be submitted after a waiver is granted and such plans are only required ''as soon as is reasonably practical.'' Furthermore, MDEQ's rule is not comparable to previously approved waiver provisions in Idaho and Wisconsin because both programs require a complete application for construction with an application for a waiver.

EPA Response: While the approvals in Idaho and Wisconsin note the submittal of a complete application for construction as additional safeguards, EPA disagrees that the submittal of a complete application for construction was established as a criterion for approval. Michigan R. 336.1202 does require application to MDEQ for a waiver. EPA does not agree that a complete application for construction is necessary, and the commenter has not provided evidence that MDEQ does not require adequate information with the waiver application. A check of MDEQ policy does in fact show that a complete application is required with an application for a waiver. Section 9–2 of MDEQ's ''Permit to Install Workbook'' states that a PTI application must be submitted ''before, or with, a construction waiver request.''

Comment 6: Michigan R. 336.1202 conflicts with the Act and EPA regulations governing minor source review because it essentially amounts to a director's discretion provision to provide new exemptions from the substantive requirements of the permit to install requirements. That is because the source does not have to submit relevant information about the new or modified source to determine if it would interfere with the control strategy or cause or contribute to a NAAQS violation until after construction has begun, the new or modified source's proposed location and impact on air quality would not have to be disclosed to the public until after construction has begun, and if the source was planning on requesting enforceable emission limitations to avoid major source permitting requirements, no review by the MDEQ, the public, or EPA would be done until after construction has begun.

EPA Response: As discussed above, a complete application for a PTI is required with an application for a waiver. Because any source seeking synthetic minor or netting limitations is considered major until such time as a permit with practically enforceable limitations is issued, the rule would only allow a waiver for true minor actions. Finally, the rule prohibits operation until a final permit is issued, and that permit must meet the public notice procedures of the approved SIP.

C. Michigan R. 336.1209 Use of Old Permits To Limit Potential to Emit

Michigan R. 336.1209 allows a source to rely on a permit to install or a permit to operate issued by MDEQ before May 6, 1980 (prior to approval in the SIP), or issued by Wayne county before a delegation of authority to Wayne county pursuant to state statute for the purposes of applicability to Michigan R. 336.1210. Michigan R. 336.1210 is the state's Title V operating permit program.

Comment 1: This rule could allow a source to avoid the state's Title V requirements by relying on emission limits in permits that the state or Wayne County no longer have the ability to enforce due to the permit being based on rules that are extremely out of date or no longer on the books.

EPA Response: Changes to rules do not invalidate permits already issued. If the permits issued were non-expiring, they are still legally binding regardless of changes to the state's permitting rules. EPA sees this provision as reaffirming the state's authority to enforce these permits.

Comment 2: The provisions of Michigan Rule 336.1209 that allow sources to rely on pre-1980 permits and permit limits may result in permits that are inconsistent with EPA's criteria for ''practically enforceable'' limits. Those criteria include the requirement that the permit expressing the emission limits must identify the methods for determining compliance with the limit and require monitoring, recordkeeping and reporting. The commenter notes that neither Michigan R. 336.1209 or Michigan R. 336.1205(1)(a) specifically require that the permit to be used to avoid Title V requirements include these compliance assurance requirements.

EPA Response: Michigan R. 336.1209 requires that the permit contain production and/or operational limits consistent with the requirements of Michigan R. 336.1205(1)(a). Michigan R. 336.1205(1)(a) requires that limits be enforceable as a practical matter. While Michigan R. 336.1205(1)(a) does provide some detail regarding the types of limits that could be used and the timeframes for the limits, EPA does not see the language in this rule as defining ''enforceable as a practical matter'' and sees nothing in the language that would be inconsistent with EPA policy on what makes a limit enforceable as a practical matter. Furthermore, the commenter has not described how avoiding an operating permit requirement would impact the state's preconstruction permitting program.

Comment 3: EPA has established certain criteria that need to be met in order to establish enforceable limits on potential to emit, which include among other things EPA and public notice and the opportunity to comment on a potential to emit limit. (See 1/25/95 EPA Memo with Subject ''Options for Limiting Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' at 3–4.)

EPA Response: The reference cited by the commenters is a discussion regarding the criteria for SIP approval of a federally enforceable state operating permit program (FESOP). As noted in the referenced memo, a criterion for approval of a FESOP program is that permits ''be issued in a process that provides for review and an opportunity for comment by the public and by EPA.'' Michigan R. 336.1209 is not a FESOP program, and the criteria for FESOP approval is not an appropriate measure for this rule.

Comment 4: To a large extent, EPA's criteria for creating practically enforceable emission limits to avoid major source permitting was developed pursuant to the 1987 Court decision *United States* v. *Louisiana Pacific,* 682 F. Supp. 112(D. Colo. 1987), 682 F.

Supp. 1141 (D. Colo. 1988). By allowing Michigan sources to rely on permits issued well before this Court decision and before May 6, 1980, it seems highly doubtful that the Michigan or Wayne County permits upon which a source might rely to avoid Title V permitting meet EPA's more recent criteria for creating practically enforceable limits on potential to emit. Until it is clear that EPA has undertaken a review of these older programs and verified as such, as well as verified that the state or Wayne County still has authority to enforce such permits, EPA must not approve Michigan R. 336.1209 as part of the Michigan SIP.

EPA Response: The commenter seems to suggest that any limit predating the *United States* v. *Louisiana Pacific* decision and EPA's subsequent guidance could not be enforceable as a practical matter. Minor permit programs had been a part of state SIPs for nearly a decade before the decision and EPA's subsequent guidance. The fact that the EPA and the court found the Louisiana Pacific permit deficient is not evidence that all prior permits were somehow deficient. The rule requires that the old permit contain limits that are enforceable as a practical matter and that the permittee continue to maintain records, conduct monitoring, and submit reports to show that the source is in compliance with those terms.

D. Michigan R. 336.1278 Exclusion From Exemption and Michigan R. 336.1278a Scope of Permit Exemptions

Michigan R. 336.1278 and 336.1278a work together to define the scope of the permit exemptions in Michigan R. 336.1280 through 336.1290 and to ensure that sources choosing to forgo a case-by-case permitting decision collect and maintain data necessary to demonstrate that any construction related activities qualified for the exemptions. Michigan R. 336.1278 excludes major activities subject to either the PSD or major non-attainment programs from using the exemptions. This rule also affirms that the exemptions only apply to the requirement to obtain a construction permit and that all other applicable requirements including existing permit limitations must be met. Michigan R. 336.1278a requires sources using an exemption to maintain records that demonstrate the applicability of the exemption including information such as a description of equipment installed, date of installation, identification of the specific exemption being applied and an analysis that the exemption exclusions in Michigan R. 336.1278 do not apply.

Comment 1: Michigan's PTI regulations are an umbrella permit program that apply to new major sources and major modifications as well as minor sources and modifications. Many of the PTI exemptions, particularly the broadly-worded exemptions in Michigan R. 336.1285, could allow otherwise major modifications to escape review, despite the limitations in Michigan R. 336.1278 and 336.1278a. Thus, EPA is not justified in relying on Michigan R. 336.1278 and R. 336.1278a for assurance that all of the PTI exemptions in Michigan R. 336.1280 through Michigan R. 336.1290 will not allow a project to escape major source permitting.

EPA Response: EPA agrees with the commenter that the provisions in Part 2 apply to both minor sources and major modifications. EPA disagrees that the PTI regulations exemption would allow major modifications to escape review. The commenter is correct to a certain extent that the provisions in Part 2 apply to both major and minor construction activities. For example, the Part 2 rules do address the general requirement to obtain a permit, public notice procedures, and grounds for permit denial of all construction permit programs. However, the Part 2 rules do not define the applicability criteria for the state's PSD and major non-attainment NSR programs. The state's PSD rules in Part 18 and major non-attainment NSR rules in Part 19 define the specific requirements, including applicability, of those major source construction permitting programs. Michigan R. 336.1278 prohibits the use of the exemptions if the activity would be subject to PSD or major non-attainment permitting requirements. The applicability procedures in Part 18 and Part 19 are independently applicable, and nothing in Part 2 of the Michigan Rules would alter them; therefore, EPA finds that the exclusion in Michigan R. 336.1278 is adequate.

Comment 2: The specific provisions of Michigan R. 336.1278 fail to ensure that projects that should be required to obtain a PSD or major non-attainment permit will not be exempt from a PTI pursuant to the exemptions in Michigan R. 336.1280 through R. 336.1290 because Michigan R. 336.1278(1) does not use the same terms that are used in the PSD or non-attainment NSR regulations for identifying what changes may trigger NSR review. Specifically, the PSD and nonattainment NSR rules use the term ''project'' which is defined as ''a physical change or change in the method of operation of an existing major stationary source'' and Michigan R. 336.1278 uses the term ''activity.'' Michigan R. 336.1278(1)(b) defines ''activity'' as ''the concurrent and related installation, construction, reconstruction, relocation, or modification of any process or process equipment.'' It does not appear that this definition encompasses changes in the method of operation of any process or process equipment. The commenter also asserts that the definition of ''activity'' is inconsistent with EPA's aggregation policy because EPA policy does not require that changes be concurrent.

EPA Response: The MDEQ definition of ''activity'' includes ''modification of any process or process equipment.'' MDEQ defines ''modify'' in Michigan R. 336.1113(e). The definition of ''modify'' includes physical changes in, or changes in the method of operation of an existing process or process equipment. MDEQ has not excluded changes in the method of operation as suggested by the commenter. The commenter made a similar comment with respect to aggregation in their comments on the waiver provision at Michigan R. 336.1202. See EPA's response to Comment 3 in Section II.B of this action.

Comment 3: While Michigan R. 336.1278a(1)(c) does require an analysis demonstrating that Michigan R. 336.1278 does not apply to the process or process equipment, the rule does not clearly require such analysis for modification to process equipment.

EPA Response: EPA disagrees with this comment. It is clear that the ''exempt process or exempt process equipment'' in Michigan R. 336.1278a is referencing the exempt activity as defined by each of the categories of exemptions in Michigan R. 336.1280 through 336.1290. If the exempt process or exempt process equipment as defined by a specific exemption would include modifications to existing equipment, the facility applying the exemption would be required to maintain an analysis that the exemption applies to the modification of equipment.

Comment 4: Michigan R. 336.1278a(1)(c) does not specify how the analysis that Michigan R. 336.1278 does not apply should be done. Given that the language and terms of Michigan R. 336.1278(1) are not consistent with the terms and applicability procedures of the major NSR rules, it is imperative that the recordkeeping rule at Michigan R. 336.1278a(1)(c) specify the applicability procedures in the major PSD and non-attainment NSR rules. Given the complex procedures, how they differ for new emissions units versus existing emissions units, and the fact that Michigan R. 336.1278(1) uses different terminology than the major

source permitting rules, this is a major omission.

EPA Response: As explained previously, nothing in the Part 2 rules impacts applicability under the state's major source permitting rules in Part 18 and Part 19. EPA believes that the expectation of Michigan R. 336.1278a(1)(c) is clear in that it requires a source applying any of the exemptions to maintain an analysis and records that support that (1) the project was not major pursuant to the requirements of the approved Part 18 or Part 19 programs, and (2) that the process or process equipment in question, meets the applicability criteria of whichever specific exemption they are claiming as defined by that exemption. Michigan very clearly states this in their May 15, 2012, letter from Dan Wyant to Susan Hedman. In its explanation of how these rules work to limit the scope of the exemptions, MDEQ states ''A source must, therefore, first determine if it is excluded from exemption under Rule 278 before evaluating whether it is eligible for one of the specific exemptions in Rules 280 through 290.'' In other words, major source permitting applicability must be determined before consideration of the Part 2 exemptions.

Comment 5: Michigan R. 336.1278a does not clearly require an analysis demonstrating that the specific exemption being used applies to the activity. Michigan R. 336.1278a must require an analysis demonstrating the applicability of an exemption, not just a description of the exempt process and an identification of the exemption being applied as suggested by Michigan R. 336.1278a(1)(a) and (b).

EPA Response: Michigan R. 336.1278a(1) states ''To be eligible for a specific exemption listed in R 336.1280 to R 336.1291, any owner or operator of an exempt process or exempt process equipment must be able to provide information demonstrating the applicability of the exemption.'' The language in Michigan R. 336.1278a(1)(a) and (b) are examples of what that information might be and not an all-inclusive list of required information. EPA believes that the intent of the rule is clear in that a source opting to use an exemption must keep any data required to demonstrate applicability of an exemption. The specifics of the necessary data are determined by each exempt category. If the exemption is based on size or capacity of a unit, the source must keep data on the size of the emission unit. If the exemption is based on the type of activity and associated emissions, the source would need to maintain records describing the exact nature of the change and an analysis of the resulting change in emissions. EPA does not agree that further clarification in Michigan R. 336.1278a is necessary.

Comment 6: The recordkeeping requirements of Michigan R. 336.1278a are not sufficient to ensure that activities will not escape major NSR permitting and are not adequate to ensure lawful implementation of all the permit exemptions. The rule does not clearly require the preparation of a demonstration at the time of the exemption. The rule does not clearly require that any demonstration be prepared and retained, instead it appears that it could be prepared once MDEQ requests it. Finally, the commenter objects to the rule only requiring submittal of records upon request by MDEQ arguing that the state will not be able to ensure proper implementation without upfront approval of the use of the exemptions by the state.

EPA Response: The fact that the Michigan R. 336.1278a(2) has set a deadline for responding to a written request by the state does not equate to a requirement for no records until such time as the state asks. The first requirement of every exemption is ''This rule does not apply if prohibited by R 336.1278 and unless the requirements of R 336.1278a have been met.'' Because Michigan R. 336.1278a(1) requires that ''to be eligible'' for an exemption, the owner/operator of a source must be able to provide the information in Michigan R. 336.1278a(1) and each individual exemption requires that those rules have been met, the clear intent is that the information demonstrating the applicability of the exemption be developed before the change and records kept immediately upon implementation. Finally, the commenter seems to suggest that only a requirement for upfront permitting authority approval is enforceable. 40 CFR 51.160(e) requires the state's procedures to ''identify types and sizes of facilities, buildings, structures, or installations which will be subject to review.'' The application requirements of 40 CFR 51.160(c) only apply to those activities subject to review. If the state had established blanket tonnage thresholds, we would not expect that projects under those thresholds would require a notice to the permitting authority and that the permitting authority would affirm that those projects are below the threshold. MDEQ has defined the types and sizes of facilities subject to review—any construction activity not listed in the categories of exemptions. Nothing in the Act or 40 CFR 51.160 would require notice or application from a source not subject to review. With respect to enforceability, like tonnage thresholds, the exemptions are enforced through periodic inspection of facilities.

E. Michigan R. 336.1280–R. 336.1290 PTI Exemptions

Michigan R. 336.1280–R. 336.1290 define the specific categories of exemptions.

1. General comments on Michigan PTI exemptions and MDEQ and EPA analysis of exemptions

Comment 1: In the November 9, 1999, proposed disapproval, EPA stated the state ''must demonstrate why these sources need not be subject to review in accordance with *Alabama Power* de minimis or administrative necessity criteria.'' EPA indicated such a demonstration would likely include ''(1) an analysis of the types and quantities of emissions from exempted sources, and (2) an analysis which shows that exempting such facilities from permitting review will not interfere with maintenance of the NAAQS or applicable control strategy, and otherwise fulfills the purposes of the minor NSR regulations.'' With respect to assuring that this SIP relaxation won't interfere with attainment or maintenance of the NAAQS or otherwise fulfill the requirements for minor new source review, EPA is relying on MDEQ's submittals from 2003 and 2017 to show that the SIP revision won't interfere with attainment or maintenance of the NAAQS. In those submittals, MDEQ provided example emission estimates for a select set of exemptions but not for all of the exemptions in Michigan R. 336.1280–336.1290.

EPA Response: In our review of the 2003 and 2017 submittals, EPA did not find any new exemption that was not sufficiently addressed by MDEQ to demonstrate non-interference. The commenters have not provided any specific examples. We think it is also important to note that in 1999 EPA did not conclude that any of the new exemptions were in fact a relaxation of the existing SIP in the proposed disapproval. EPA's finding was that MDEQ had failed to provide the required analysis addressing the effect of the changes on the current SIP.

Comment 2: MDEQ did not document the basis for its emission factors used for its emission estimates, and it is not clear that MDEQ has used realistic worst case emission factors.

EPA Response: The commenters did not provide any specific examples of undocumented emission factors. In our review of the emission estimates

provided, MDEQ has used emission factors from AP–42 or other EPA documents, manufacturer's data, stack testing, information from past state permitting actions, data from the Michigan Air Emission Reporting System, mass balance, or some combination of these sources to estimate emissions. The data used is clearly documented by MDEQ for each estimate. There are a few exemptions that do not result in emissions of any criteria pollutant or any pollutant at all. In those circumstances, MDEQ has provided an explanation of why those processes would not result in emissions of a pollutant regulated under section 110 of the Act. For example, Michigan R. 336.1285(2)(ii) exempts ''fuel cells that use phosphoric acid, molten carbonate, proton exchange membrane, or solid oxide or equivalent technologies.'' In their analysis, MDEQ does not provide an emission calculation, but provides an explanation for why no emissions of criteria pollutants are expected from this technology. EPA finds that MDEQ has used appropriate sources for emission factors and that the commenters have provided no evidence supporting their claims.

Comment 3: EPA's proposed approval of these exemptions fail to fulfill the purpose of the minor NSR regulations. The December 31, 2002, major source permitting rule revisions significantly revised and limited applicability to major source permitting for modifications at major sources. In justifying that rulemaking, EPA cited to state's minor NSR rules as providing the needed oversight of modifications at existing major source in the cases where modifications at major sources could more readily be considered minor modifications. For example, EPA stated in the preamble to the 2002 rules that it anticipated a ''large majority of the projects that are not major modifications may nonetheless be required to undergo a permit action through States' minor NSR permit programs'' and stated that such programs could provide an opportunity to ensure that the permitting authority agrees with a source's emission projections.

EPA Response: EPA disagrees that the MDEQ minor NSR permitting program will not address ''a large majority of the projects that are not major modifications.'' In the 2002 rulemaking, EPA did not state that every change that was no longer subject to the major source permitting requirements due to NSR Reform would be picked up by the state minor NSR programs, and statements in the preamble to NSR Reform are not evidence that the Michigan minor NSR program is not part of a program serving the intended purpose of section 110(a)(2)(C) of the Act to prevent construction that would interfere with attainment and maintenance of the NAAQS. MDEQ has been implementing these exemptions for over a decade and EPA is not aware of a NAAQS violation resulting from their use and the commenters have not presented any specific evidence that they could result in a violation.

2. Rule Specific Comments

a. Michigan R. 336.1285(2)(a) PTI Exemptions

Michigan R. 336.1285(2)(a) exempts ''routine maintenance, parts replacement, or other repairs that are considered by the department to be minor, or relocation of process equipment within the same geographical site not involving any appreciable change in the quality, nature, quantity, or impact of the emission of an air contaminant therefrom.'' The rule also includes examples of changes that would be covered by the exemption. These examples help to define the scope of changes MDEQ intended the exemption to cover. EPA specifically noted concerns with this exemption in a November 9, 1999, proposed disapproval. This exemption is part of the approved SIP. Michigan had made some fairly minor changes such as changing the word ''commission'' to ''Department.'' The only substantive change was the addition of the word ''routine.'' Because it might be interpreted as defining ''routine maintenance, repair and replacement'' under the major source permitting rules, EPA was concerned that the ambiguity might lead to sources inappropriately applying the exemption to major source permitting. There have been significant changes to the structure of MDEQ's major source permitting rules since 1999. At that time, PSD permits were issued pursuant to a delegation of 40 CFR 52.21 through the general requirements of the Part 2 rules. The state's major non-attainment permitting rules were also included in Part 2 at that time. MDEQ now has a SIP approved PSD program, and the major source permitting requirements have been moved to separate sections of the Michigan Administrative Code. The PSD rules are in Part 18 and the major NSR rules are in Part 19. EPA believes the previously listed concerns are effectively addressed by the requirements of Michigan R. 336.1278 and 336.1278a in conjunction with the move of major source applicability criteria to separate rule sections.

Comment 1: The terms ''minor'' and ''appreciable'' are vague, undefined terms that are subject to varying interpretations. Given that the facilities will be making the determinations of whether an activity can be exempt under Michigan R. 336.1285(2)(a) and not MDEQ, the likelihood of wide and varying interpretations of this provision are great, and thus the limitations of this exemption are unenforceable. The minor NSR provisions for SIPs at 40 CFR 51.160(a) and (e) require the state to clearly define the sizes and types of sources subject to review and to do so through legally enforceable procedures, and MDEQ has not done so.

EPA Response: EPA disagrees that the cited terms make the limitations unenforceable. We believe that the terms, in context, have their common meanings, and that MDEQ has satisfactorily described the intent of these rules. For example, the state's interpretation of ''appreciable'' as stated in their May 15, 2012, letter is the common definition of the word, ''capable of being perceived or measured.'' A change in emissions that is capable of being measured is actually a fairly restrictive limitation. EPA also believes that the state has developed adequate policy for their permitting program and exemptions to minimize the likelihood of misuse. More importantly, on page 11 of the document ''Response to the United States Environmental Protection Agency's May 12, 2014, Need for Additional 110(l) Analysis,'' included in the 2017 submittal, MDEQ has clearly indicated that this exemption ''is in no way intended to define routine maintenance, repair and replacement,'' and confirm their adherence to current EPA policy on the matter.

Comment 2: The fact that this rule allows ''relocation of process equipment within the same geographical site is extremely problematic, as any relocation of a source of air emission can change that source's impact on air quality and can negate any prior air quality analyses that have been done for the source.

EPA Response: This is language that has already been approved into the Michigan SIP, and is not open for comment through this action.

Comment 3: This rule could be considered to redefine ''routine maintenance, repair, and replacement'' under the major source PSD and nonattainment NSR rules. This was a concern raised by EPA, to which MDEQ responded to in part that its ''Part 2 exemptions are designed for use by small emitting sources.'' However,

nothing in the PTI rules or exemptions limit those permit requirements to ''small emitting sources.'' Indeed, the PTI program encompasses PSD and nonattainment NSR requirements and activities at existing major source subject to PTI requirements.

EPA Response: As stated previously, EPA believes the additional restrictions included in Michigan R. 336.1278 and R. 336.1278a have adequately addressed these concerns. MDEQ clearly requires that a source first determine that a change is not subject to major source permitting requirements prior to implementing any of the listed exemptions. Furthermore, MDEQ has confirmed their adherence to current EPA guidance on routine maintenance, repair and replacement in the 2017 submittal as described above.

Comment 4: While Michigan R. 336.1285(2)(a) gives examples of the types of parts replacement it considers to be ''minor,'' some of those examples could be construed as allowing component replacement that should not be considered routine. Specifically, Michigan provides examples that include replacement of fans, pumps, or motors ''that do not alter the operation of the source,'' replacement of boiler tubes, replacement of engines, compressor or turbines ''as part of a normal maintenance program.''

EPA Response: See response to comment 3 above.

b. Michigan R. 336.1285(2)(b) PTI Exemptions

Michigan R. 336.1285(2)(b) exempts ''changes in a process or process equipment which do not involve installing, constructing, or reconstructing an emission unit and which do not involve any meaningful change in the quality and nature or any meaningful increase in the quantity of the emission of an air contaminant therefrom.''

Comment 1: This rule has vague, undefined terms such as ''any meaningful change,'' ''quality'' or ''nature'' of emissions, and ''any meaningful increase in the quantity of emissions.'' It is unclear from the rule how changes are to be evaluated and the criteria upon which ''meaningful'' would be judged. This provision is clearly not enforceable and thus does not meet the minor NSR provisions of 40 CFR 51.160(a) and (e) to clearly define the sizes and types of sources subject to review and to do so through legally enforceable procedures.

EPA Response: EPA disagrees that the cited terms make the limitations unenforceable. We believe that the terms, in context, have their common meanings, and that that MDEQ has satisfactorily described the intent of these rules. In its May 15, 2012, letter, MDEQ states that ''meaningful'' would be defined as ''having meaning or purpose.'' In the context of a minor construction permitting program that would include a change that would result in an increase that could interfere with the NAAQS or increment. The rule also lists examples of changes that could be allowed by the rule such as a change in supplier of a particular raw material. While EPA agrees that there is some ambiguity in the term ''meaningful,'' the examples in the rule itself are adequate to appropriately narrow the scope of the exemption.

Comment 2: Many of the examples of the types of changes identified in the rule that might be allowable are concerning and could allow a modification that should be reviewed for major NSR applicability. The fact that the rule limits changes to those which do not involve installing, constructing, or reconstructing an emission unit is not sufficiently protective given that the exemption still allows modifying an emissions unit. While the provisions of the rule are vague and subject to interpretation, the examples given in the rule of the types of process changes that could be exempt from a PTI show that emission increases could occur without review. EPA itself recognized this when it requested MDEQ complete an analysis under Section 110(l) of the Act.

EPA Response: EPA's request for an analysis under section 110(l) of the Act was in no way an indication that EPA believed this exemption would allow major modifications to go unpermitted. States are obligated to provide an analysis under Section 110(l) for any changes to coverage under the approved SIP. As discussed previously in this action, EPA is satisfied that the changes that MDEQ has made to Michigan R. 336.1278 and 336.1278a, will prevent the use of the exemptions for actions that are subject to major construction permitting requirements. Major NSR and/or PSD applicability must be determined pursuant to Michigan Rules Part 18 and Part 19 before the exemptions in Part 2 can be applied.

c. Michigan R. 336.1285(2)(c) PTI Exemptions

Michigan R. 336.1285(2)(c) exempts the following changes from minor construction permitting:

''Changes in a process or process equipment that do not involve installing, constructing, or reconstructing an emission unit and that involve a meaningful change in the quality and nature or a meaningful increase in the quantity of the emission of an air contaminant resulting from any of the following:

(i) Changes in the supplier or supply of the same type of virgin fuel, such as coal, no. 2 fuel oil, no. 6 fuel oil, or natural gas.

(ii) Changes in the location, within the storage area, or configuration of a material storage pile or material handling equipment.

(iii) Changes in a process or process equipment to the extent that such changes do not alter the quality and nature, or increase the quantity, of the emission of the air contaminant beyond the level which has been described in and allowed by an approved permit to install, permit to operate, or order of the department.''

Comment 1: EPA apparently decided no increase in emissions would occur with this exemption; however, it is clear that actual emissions could increase with this exemption. Further, if there are no allowable emissions limits described for a pollutant or emissions unit in a permit or MDEQ order, then it appears even allowable emissions could increase under this exemption. Changes in types of coal burned can significantly increase emissions and therefore could actually impact the NAAQS.

EPA Response: EPA disagrees with the commenter. Michigan R. 336.1285(2)(c)(i) is limited to a change in supplier or supply of the same type of fuel. EPA would not expect state minor NSR programs create limits on the supplier of a raw material and the potential impact on emissions from a change in supplier is minimal. Nothing in this rule would allow a facility to change the type of fuel combusted as suggested by the commenter. Michigan R. 336.1285(2)(c)(ii) only allows moving storage piles or equipment within the existing storage area. A change in the location of equipment and storage piles should have no impact on the quantity of emissions; furthermore, when modelling impact on NAAQS from a storage area, total emissions from the storage area are modeled as an area source. Specific locations of piles or handling equipment are not modeled. Because the rule limits changes to the existing storage area, we would not expect an impact on the NAAQS with these types of changes either. Finally, Michigan R. 336.1285(2)(c)(iii) specifically excludes changes that would increase the quantity of emissions beyond that already allowed in a permit or order issued by MDEQ. Therefore, a change in the type of fuel combusted that results in an increase in emissions, as suggested by the

commenter, would be excluded from the use of this exemption.

Comment 2: It must be pointed out that the exemptions in Michigan R. 336.1285(2)(c), being based essentially on a comparison of allowable-to-allowable emission increases, is based on an entirely inconsistent emissions increase approach than the major source permitting rules. The Courts have previously found that allowable-to-allowable emissions test are not authorized under major source permitting programs.

EPA Response: As previously discussed in this document, nothing in these rules impact applicability under major source permitting programs. MDEQ clearly requires that a source first determine that a change is not subject to major source permitting requirements prior to implementing any of the listed exemptions. With respect to requirements for applicability under minor NSR programs, the requirements of section 110(a)(2)(C) and 40 CFR 51.160 do not expressly require the use of any particular applicability test, and therefore do not prohibit the use of an allowable-to-allowable or actual-to-actual test.

Comment 3: Michigan R. 336.1285(2)(c)(ii) could readily allow a source to violate terms of an existing permit (including a major source PSD or non-attainment NSR permit) by allowing changes in the location or configuration of a material storage pile or material handling equipment. Any air modeling analysis that was done for such a source would have considered the location of material handling emissions in relation to publicly accessible land and roads. Given that fugitive emissions from material handling and/or storage piles have in many cases been modeled to cause or contribute to violations of the NAAQS or PSD increments for particulate matter (PM), particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}) and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns ($PM_{2.5}$), this cannot be considered as protective of the NAAQS.

EPA Response: Michigan R. 336.1278(4) states that the exemptions only apply to the requirement to obtain a PTI and ''do not exempt any source from complying with any other applicable requirement or existing permit limitation.'' Therefore, no exemption in Michigan R. 336.1280 through 336.1290 would allow a source to violate terms of an existing permit as suggested by the commenter. Furthermore, as discussed above, the exemption limits relocation of equipment and piles to within the existing storage area. Due to the way in which emissions from storage areas are addressed in a modeling analysis this would result in no impact on previous modeling.

d. Michigan R. 336.1285(2)(d)–(f)

Michigan R. 336.1285(2)(d) exempts the replacement or reconstruction of air pollution control equipment with equivalent or more efficient control equipment. Michigan R. 336.1285(2)(e) exempts the installation of control equipment required by a National Emission Standard for Hazardous Air Pollutants. Michigan R. 336.1285(2)(f) exempts the installation and construction of air pollution control equipment that does not result in a significant increase in a pollutant from the pollution controls.

Comment 1: EPA did not require a section 110(l) analysis for Michigan R. 336.1285(d); however, this provision could allow for the replacement of existing controls with controls that could create a new source of emissions. For example, if a scrubber is installed at a unit utilizing dry sorbent injection for sulfur dioxide (SO_2) control, the scrubber would add sources such as lime delivery and storage for scrubber waste disposal. EPA should not have excluded this provision from the requirement for a section 110(l) analysis.

EPA Response: See EPA response to comments on the 110(l) analysis in Section II. F. below.

e. Michigan R. 336.1285(2)(g)–(mm)

Comment: Michigan R. 336.1285(2)(g)–(mm) provide for 33 specific and diverse exemptions from the PTI requirements. There are certain activities that seem as if they could be significant sources of air emissions, especially because a company could claim multiple PTI exemptions from these activities.

EPA Response: As explained previously, EPA believes the limiting language in Michigan R. 336.1278 and 336.1278a is sufficient to ensure that projects subject to major construction permitting requirements are excluded from the use of the exemptions. EPA has also previously addressed the definition of activity in the rule and believes that the rule requires the appropriate aggregation of multiple small changes when making applicability decisions.

f. Michigan R. 336.1280–336.1284 and Michigan R. 336.1286–336.1290

Comment: There are certain activities in Michigan R. 336.1280 through 336.1284 and Michigan R. 336.1286 through 336.1290 that seem as if they could be significant sources of air emissions, especially because a company could claim multiple PTI exemptions from these activities.

EPA Response: As explained previously, EPA believes the limiting language in Michigan R. 336.1278 and 336.1278a is sufficient to ensure that projects subject to major construction permitting requirements are excluded from the use of the exemptions. EPA has also previously addressed the definition of activity in the rule and believes that the rule requires the appropriate aggregation of multiple small changes when making applicability decisions.

F. Comments Concerning the 110(l) Demonstration

EPA received several comments regarding the 110(l) analysis provided by MDEQ. Section 110(l) of the CAA states that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter.'' 42 U.S.C. 7410(l). EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA*, No. 06–61030 (5th Cir. Aug. 13, 2008); see also, *e.g.,* 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l).

In considering the new exemptions in Michigan R. 336.1280 through Michigan R. 336.1290, EPA examined the emission projections provided by MDEQ in the 2003 and 2017 submittals, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative air quality analysis (modeling or qualitative analysis in the case of ozone) provided in the 2017 submittal. MDEQ's currently approved permitting SIP generally requires a PTI for any change resulting in an increase in a regulated pollutant unless the particular change falls into one of the categories of exemptions contained in Michigan R. 336.1280 through Michigan R. 336.1290. MDEQ's revisions expand the exempt categories. Several of the exempt categories would have no associated emissions of criteria pollutants. Several other categories of

exemptions contain production and operation restrictions and function as a permit by rule. 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, MDEQ provided an air quality analysis. MDEQ and EPA have evaluated the impacts of the proposed revisions, and determined that they do not interfere with attainment of any NAAQS or any other CAA requirement because the use of the exemption provides the same level of control measures as the control measures that would be included in an individual construction permit, the exemption would result in little or no increase in emissions of a criteria pollutant, or MDEQ has provided a suitable air quality analysis demonstrating no interference with attainment, reasonable further progress, or any other requirement of the Act.

Comment 1: It appears that MDEQ and EPA assumed that, if emission increases were less than the major source modification significance levels, then the increase could not interfere with attainment or maintenance of the NAAQS.

EPA Response: EPA agrees that major source modification significance levels alone would be insufficient to demonstrate non-interference. As explained elsewhere in this action, MDEQ's non-interference demonstration took into account factors in addition to the significance levels, *i.e.,* emission projections, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative air quality analysis (modeling or qualitative analysis in the case of ozone) provided in the 2017 submittal. When evaluating the effect of the new exemptions, MDEQ and EPA first considered the level of control required by the current SIP. A permit issued under the currently approved SIP does not explicitly require an air quality analysis be performed. The currently approved program ensures the establishment of control measures in the permit. A number of the exemptions are structured as prohibitory rules and as such include control measures that are similar to the control measures that would be included in an individual permit. These may include restrictions on production and operation, restrictions on size of equipment, required control technology, or limits on raw materials used, in order to qualify for the exemption. Under these circumstances, EPA finds that these prohibitory rules, or permits by rule, preserve the status quo of the existing SIP. For other exemptions, MDEQ has demonstrated that the exemption will not result in an increase in emissions or have the potential to emit a criteria pollutant at all. If the exemption has no associated criteria pollutant emissions, no further analysis is necessary. For exemptions that could result in small increases in criteria pollutants, generally less than 10 tons per year, MDEQ has presented an analysis of the observed impacts from eliminating the individual permit requirement. MDEQ has reviewed the state emissions inventory to determine the amount and magnitude of emissions from the sources that are being exempted, and they have reviewed data from monitors within the state. MDEQ has not found that moving away from an individual permit for these smaller exempted sources have resulted in violations of the NAAQS. EPA has reviewed MDEQ's analysis and agrees that no NAAQS violations would result from these small emissions increases. Furthermore, the commenter has not cited any example of an individual permit for these exempt categories that would have established any additional control measures. Finally, for the single exemption that would relax the current SIP and would result in an increase of a criteria pollutant greater than 10 tons per year, MDEQ provided a conservative modeling analysis demonstrating that exempting from permitting sources of that type and size would be unlikely to result in a violation of the NAAQS. EPA has also reviewed this modeling analysis and agrees that it supports MDEQ's conclusion.

Comment 2: The impact of an activity's emissions on air pollutant concentrations is dependent on a myriad of factors including but not limited to stack height, temperature, velocity, topography, other buildings in the vicinity, and background pollutant concentrations; therefore, no specific ton per year level of emissions can be considered as protection of the NAAQS in all locations, and especially for short term average NAAQS.

EPA Response: EPA agrees that it is not possible to set a single ton per year threshold for all situations that would prevent interference. EPA disagrees that the rules set such a ton per year threshold. As discussed elsewhere, tons per year was only one of the factors MDEQ utilized to demonstrate non-interference. As previously stated, EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved.

Comment 3: MDEQ failed to evaluate emissions for the worst-case scenario under each exemption. This is especially true for the broad exemptions of Michigan R. 336.1285 where MDEQ just gave examples of emission estimates for certain exemptions.

EPA Response: There are a few exemptions where MDEQ did not provide a worst-case analysis; however, in those cases, MDEQ has provided real world examples of how the exemptions have been applied and the resulting emissions increases that are representative of the larger projects that would likely use the exemption. For example, for Michigan R. 336.1285(2)(b)(i)(H), which exempts lengthening a paint drying oven to allow for longer curing time, the emission estimates provided by MDEQ are based on an actual project at a major auto manufacturer.

Comment 4: MDEQ failed to evaluate the cumulative emissions increases that could be exempt for a single source relying on multiple exemptions (such as adding several oil-fired equipment of less than 20 MMBtu/hour pursuant to Michigan R. 336.1282(2)(b)).

EPA Response: MDEQ has provided projected increases from each of the exemptions, and EPA has found the analysis provided by MDEQ to be reasonable. With respect to the specific example provided by the commenter, the fuel burning exemption at Michigan R. 336.1282(2)(b) is structured as a prohibitory rule. The limitations imposed by the rule are equivalent to the types of limitations that would be included in a permit under the currently approved SIP. Moving from an individual permit system to a permit by rule system would preserve the status quo of the existing SIP.

Comment 5: EPA did not require a Section 110(l) analysis for Michigan R. 336.1285(2)(d) which allows for replacement of an air pollution control equipment with equivalent or more efficient equipment. However, this provision could allow an increase in emissions—for example, if a scrubber is installed at a unit utilizing dry sorbent injection for SO_2 control, the scrubber would add sources such as lime delivery and storage and for waste disposal. Thus, EPA should not have exempted this rule from a 110(l) analysis.

EPA Response: EPA did not exempt this rule from 110(l) requirements. EPA did determine that no additional analysis beyond the analysis of the exemption included with the 2003 submittal was necessary. As discussed above, EPA does not interpret 110(l) as requiring a full attainment or maintenance demonstration. The exemption is limited to the replacement

of existing controls with identical or more efficient controls. Some form of add-on control technology must already exist to use this exemption. In the example provided by the commenter, where a source replaced a dry flue gas desulfurization unit with a wet flue gas desulfurization unit, both the existing controls and the new controls would have used lime in the process. The facility would have already had sources associated with lime delivery and storage, and both controls result in waste material.

Comment 6: While EPA required a 110(l) analysis for Michigan R. 336.1285(2)(e) and (f), MDEQ simply evaluated the emission increase from a couple of examples and did not estimate worst case emissions.

EPA Response: EPA believes that the examples selected by MDEQ are representative of the types of changes that would actually use the exemptions.

Comment 7: EPA and MDEQ have not demonstrated that permit exemptions for activities with emission increases less than PSD significance levels will not interfere with attainment or maintenance of the NAAQS and will otherwise be consistent with the requirements of the Act.

EPA Response: EPA's conclusion that the changes to exempt categories will not interfere with attainment or maintenance of the NAAQS is not based on the assumption that increases less than the PSD significance thresholds will not impact the NAAQS. As discussed above, EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. In considering the new exemptions in Michigan R. 336.1280 through Michigan R. 336.1290, EPA examined the emission projections provided by MDEQ in the 2003 and 2017 submittals, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative air quality analysis (modeling or qualitative analysis in the case of ozone) provided in the 2017 submittal.

Comment 8: MDEQ's modeling demonstrates that emission increases at levels much lower than the PSD significance levels could threaten attainment of the NAAQS and that other contributing factors such as stack characteristics and background concentration of an area must also be taken into account. Furthermore, because the modeling performed shows modeled concentrations near the 24-hour $PM_{2.5}$ NAAQS, MDEQ's modeling demonstrates that Michigan R. 336.1285(p) could result in a violation of a NAAQS.

EPA Response: The modeling submitted in support of Michigan R. 336.1285(2)(p) is sufficiently conservative to demonstrate that the exemption is unlikely to result in a violation of a NAAQS. While the modeled concentration for larger tower dryers when combined with a conservative background are approaching the 24-hour $PM_{2.5}$ NAAQS, this type of equipment is uncommon in the state of Michigan and would be located in rural areas where background concentrations tend to be lower. The more common column dryers would have a significantly lower impact on $PM_{2.5}$ concentrations.

Comment 9: EPA cannot justify approving Michigan's minor source review exemptions based on how such activities were previously permitted by MDEQ.

EPA Response: As stated above EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. When evaluating the effect of any new exemption, EPA must first consider the level of control required by the current SIP. In this case, the evaluation concerns the effect of the individual construction permit issued as required by the currently approved permitting rules. A permit issued under the currently approved SIP does not explicitly require an air quality analysis be performed. What is assured under the currently approved program is the establishment of control measures in the permit. A number of the exemptions are structured as prohibitory rules and include control measures that are similar to the control measures that would be included in an individual permit. These may include restrictions on production and operation, restrictions on size of equipment, required control technology, or limits on raw materials used. Under these circumstances, EPA finds that these prohibitory rules, or permits by rule, preserve the status quo of the existing SIP.

Comment 10: In the proposed approval EPA states, ''where an exemption could result in an increase of a regulated pollutant in amounts greater than 10 tons per year, MDEQ provided modeling, or in the case of ozone, a qualitative analysis to demonstrate that the emissions that could result from the exempt categories would have no significant impact on compliance with the NAAQS.'' A modeling analysis was only included for Michigan R. 336.1285(2)(p), yet a review of Attachment H to the 2003 submittal shows several categories with estimates exceeding 10 tons per year. Specifically, the commenter has identified the fuel burning equipment exemptions in Michigan R. 336.1282(2)(b).

EPA Response: EPA disagrees to the extent that the commenter is suggesting that a demonstration of non-interference requires modeling for all exemptions. As previously discussed, the fuel burning exemptions in Michigan R. 336.1285(b) are structured as permits by rule and contain enforceable restrictions on capacity and raw materials which are equivalent to the controls that would be included in a permit under the currently approved SIP. Moving from an individual permit system to a permit by rule system would preserve the status quo of the existing SIP. The only exemption that relaxes the current SIP permitting requirements with a resulting increase greater than 10 tons per year is the grain handling exemption at Michigan R. 336.1285(p), for which MDEQ provided a modeling analysis showing that the revision would not interfere with attainment of the NAAQS.

G. Comments Concerning the Docket

Approximately a week before the end of the first comment period for this rulemaking, EPA was informed of issues with the electronic docket at *regulations.gov*. The docket incorrectly linked to numerous unrelated documents. Additionally, upon review, EPA noted that certain documents related to the rulemaking were not present. The interested parties requested that the docket be fixed and that EPA extend the comment period. Because of the lack of time remaining on the comment period, EPA was unable to extend the comment period, and informed the interested parties that EPA would address the docket issues and reopen the comment period for an additional 30 days. The comments received after the close of the first comment period noted the docket issues in the comments. EPA added missing information to the docket in September 2017 and published a notice reopening the comment period for 30 days on November 2, 2017.

In comments received during the first reopening, commenters noted that the electronic file for the September 2003 submittal from MDEQ was missing an attachment. The missing information was added to the electronic docket in November of 2017, and the interested parties were informed that EPA would reopen the comment period for a second time for a period of 15 days. The second reopening of the comment period was published on January 9, 2017. EPA believes that the correction of the

electronic docket and the two notices reopening the comment period for the rulemaking address all comments related to missing information in the docket.

The comments received during the first reopening also noted that EPA had included copies of several MDEQ policy documents to the docket. The commenters noted that if EPA is proposed to approve any of these documents as part of the SIP, EPA must issue a revised proposed rulemaking making clear to the public which documents it is proposing to approve. EPA is not approving these documents into the SIP and the summary of documents EPA is incorporating into the SIP in Section VI ''Incorporation by Reference'' in the proposed rulemaking is correct. The policy documents were added because EPA thought they would be of interest to the public. EPA is not relying on these documents to support approval of the rules, and there is no need to re-propose based on the addition of these documents to the docket as suggested by the commenters.

III. What action is EPA taking?

EPA is approving all changes submitted by MDEQ except for changes to Michigan R 336.1205 which includes provisions for public notice. EPA will not be taking any action with respect to the changes in public notice and will be addressing Michigan R 336.1205 in a separate action. The already approved public notice procedures will remain in the SIP until EPA takes action on Michigan R 336.1205.

IV. 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 the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *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 State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Act 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.[1]

V. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Act. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2018. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 21, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

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:

[1] 62 FR 27968 (May 22, 1997).

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.1170, the table in paragraph (c) is amended by revising the entries under the heading ''Part 2. Air Use Approval'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 2—Air Use Approval				
R 336.1201	Permits to install	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1201a	General permits to install	7/01/2003	08/31/2018, [Insert **Federal Register** citation].	
R 336.1202	Waivers of approval	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1203	Information required	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1204	Authority of agents	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1206	Processing of applications for permits to install	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1207	Denial of permits to install	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1209	Use of old permits to limit potential to emit	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1212	Administratively complete applications; insignificant activities; streamlining applicable requirements; emissions reporting and fee calculations.	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1216	Modifications to renewable operating permits	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1219	Amendments for change of ownership or operational control.	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1221	Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval.	7/17/1980	1/12/1982, 47 FR 1292.	
R 336.1240	Required air quality models	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1241	Air quality modeling demonstration requirements	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1278	Exclusion from exemption	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1278a	Scope of permit exemptions	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1280	Permit to install exemptions; cooling and ventilating equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1281	Permit to install exemptions; cleaning, washing, and drying equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1282	Permit to install exemptions; furnaces, ovens, and heaters.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1283	Permit to install exemptions; testing and inspection equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1284	Permit to install exemptions; containers	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1285	Permit to install exemptions; miscellaneous	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1286	Permit to install exemptions; plastic processing equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1287	Permit to install exemptions; surface coating equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1288	Permit to install exemptions; oil and gas processing equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1289	Permit to install exemptions; asphalt and concrete production equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1290	Permit to install exemptions; emission units with limited emissions.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1299	Adoption of standards by reference	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*

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[FR Doc. 2018–18853 Filed 8–30–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0701; FRL–9983–11—Region 3]

Air Plan Approval; District of Columbia; State Implementation Plan for the Interstate Transport Requirements for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia (the District) that pertains to the good neighbor and interstate transport requirements of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS). The CAA's good neighbor provision requires EPA and states to address the interstate transport of air pollution that affects the ability of other states to attain and maintain the NAAQS. Specifically, the good neighbor provision requires each state in its SIP to prohibit emissions that will significantly contribute to nonattainment, or interfere with maintenance, of a NAAQS in another state. The District submitted a SIP revision on June 13, 2014 that addresses the interstate transport requirements for the 2008 ozone NAAQS. On July 5, 2018, EPA published a proposed rule for just the good neighbor provision of the District's June 13, 2014 submittal. EPA is approving the District's SIP as having adequate provisions to meet the requirements of the good neighbor provision for the 2008 ozone NAAQS in accordance with section 110 of the CAA.

DATES: This final rule is effective on October 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0701. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 13, 2014, the District Department of the Environment (DDOE) on behalf of the District submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. On April 13, 2015 (80 FR 19538), EPA approved all parts of the District's June 13, 2014 submittal with the exception of the portion of the submittal that addressed section 110(a)(2)(D)(i)(I) of the CAA. Section 110(a)(2)(D)(i)(I), also called the good neighbor provision, consists of two prongs that require that a state's [1] SIP must contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that ''contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard.'' Under section 110(a)(2)(D)(i)(I) of the CAA, EPA gives independent significance to the matter of nonattainment (prong 1) and to that of maintenance (prong 2).

On July 5, 2018 (83 FR 31350), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, approving the portion of the June 13, 2014 District SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.[2]

II. Summary of SIP Revision and EPA Analysis

In its June 13, 2014 submittal, the District identified the implemented regulations within its SIP that limit nitrogen dioxide (NO_X) and/or volatile organic compound (VOC) emissions from District sources.[3] The District indicates that there are no electric generating units (EGUs) [4] or other large industrial sources of NO_X emissions within the District. In the submittal, the District also included information on non-EGUs and mobile sources and listed the SIP-approved measures that help to reduce NO_X and VOC emissions from non-EGU and mobile sources within the District. In the submittal, the District points out that it will continue to rely on federal measures to reduce NO_X emissions from onroad and nonroad engines. The District states its sources are already well controlled, and states further reductions beyond the District's current SIP measures are not economically feasible.

EPA evaluated the District's submittal for the 2008 ozone NAAQS, considering: Ozone precursor emissions; an analysis of District source sectors; and in-place controls and regulations. Due to the District's small number of sources and the high cost of further reductions, EPA proposed in its July 5, 2018 NPR that the District's SIP, as presently approved, contains adequate measures to prevent District sources from interfering with maintenance or contributing significantly to nonattainment in another state for the 2008 ozone NAAQS. The rationale for EPA's proposed action was discussed in greater detail in the NPR and accompanying technical support document (TSD) and will not be restated here.

[1] The term state has the same meaning as provided in CAA section 302(d) which specifically includes the District of Columbia.

[2] All the other infrastructure SIP elements for the District for the 2008 ozone NAAQS were addressed in a separate rulemaking. See 80 FR 19538 (April 13, 2015).

[3] Both NO_X and VOCs are precursors to ozone formation.

[4] The District's last remaining EGUs were decommissioned in 2012, in part to meet permit requirements incorporated into the District's Regional Haze SIP. 77 FR 5191 (February 2, 2012).