

Agency Report to the
JOINT COMMITTEE ON ADMINISTRATIVE RULES

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Department

Environmental Quality

Division/agency/bureau:

Air Quality Division (AQD)

Rule set number (as assigned by SOAHR)

2004-054EQ

Title of rules:

Michigan Air Pollution Control Rules; Part 19, New Source Review for Major Sources Impacting Nonattainment Areas

1. Name, address, FAX and phone numbers of agency contact person:

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2. Purpose for the proposed rules and background:

Rule packages SOAHR 2004-006EQ, 2004-007EQ, and 2005-054EQ contain the rules necessary to implement a complete, modern New Source Review (NSR) program that meets all federal requirements for permitting major sources in nonattainment areas. These rules were developed, together with SOAHR 2004-008EQ (which consists of rules for NSR permitting in attainment areas), for the purpose of achieving a complete NSR permitting State Implementation Plan (SIP) for Michigan. Currently, the AQD permits major sources of air pollution located in nonattainment areas through R 336.1220. R 336.1220 has been approved by the U.S. Environmental Protection Agency (EPA) into Michigan's SIP; however, it reflects federal requirements from the mid-1980's.

These rule packages adopt the most recent federal permitting requirements (40 C.F.R. §51.165). These changes are necessary to satisfy a federal mandate, because the EPA required that all states adopt these rules (that is, 40 C.F.R. §51.165) by January 2, 2006. This mandate, known as a "SIP Call," was published in the *Federal Register* on December 31, 2002, at 67 F.R. 80186, 80240-41. The EPA could sanction Michigan for

not meeting the federal mandate. Sanctions could include a moratorium on new construction in the state, a loss of federal grant funds, and a loss of federal highway funds.

These rules are the product of extensive stakeholder input. The stakeholder group consisted mainly of members of the industrial sector and representatives of the environmental community. The first stakeholder meeting was held on March 19, 2004, and the final meeting was held on March 14, 2006. All of the proposed rules are supported by the stakeholder workgroup. Additionally, the Department of Environmental Quality's (DEQ's) Environmental Advisory Council was briefed on the rule development on June 17, 2004.

A public hearing was originally held on this rules package on December 20, 2006. Additional information pertinent to the draft rules was received after the public comment was closed. The draft rules were revised and a second public hearing was held on July 19, 2007, to take public comment on two changes to proposed Rule 1901.

3. Summary of proposed rules:

Original Proposal

This rules package creates a new Part 19 and adds seven new rules. The package adds R 336.2901 through R 336.2903, R 336.2907, R 336.2908, and R 336.2910 (Rules 1901-1903, 1907, 1908, and 1910).

The new rules reflect all requirements of the Clean Air Act (CAA), 42 U.S.C. 7501 – 7509a, and also reflect recent changes to 40 C.F.R. §51.165. These changes were promulgated by the EPA in an effort to make applicability more flexible by encouraging efficient, emission-reducing improvements at existing permitted sources. The new rules mirror the federal requirements. However, the format has been changed to reflect Michigan administrative rule promulgation requirements.

Rule 1910 allows the administrative appeal of permit application decisions. It does not mirror the requirements of 40 C.F.R. §51.165. However, this rule was added to ensure that the administrative procedures for processing permits to install in a state-administered permitting program would be as similar as possible to the federal administrative appeal process that is currently in place for the PSD permitting program.

Two portions of the Part 19 rules contain language that is intended to apply in attainment areas (i.e. the Part 18 rules) as well as in nonattainment areas. This language addresses issues that arose after the public hearing was held for the Part 18 rules. Including this language in the Part 19 rules will ensure that interested members of the public have adequate opportunity to review and comment. The two provisions are described as follows:

- Rule 1902(6)(f) states that a major stationary source that uses the projected actual emissions method to determine that its modification is insignificant must verify the projection on an annual basis for five years after the change whenever there is a reasonable possibility that the modification could be significant. The rule then defines the term “reasonable possibility” to mean any modification that is subject to the AQD minor permitting program. This addresses recent concerns expressed by the D.C. Circuit Court regarding the federal rules and is consistent with the way the AQD is currently implementing the federal PSD permitting rules.
- Rule 1910(c) explicitly states that a permit is valid upon issuance and it is not subsequently stayed if a contested case hearing is requested. Since absent a rule or law that requires a stay upon appeal a permit is valid upon issuance, the AQD did not include this language in the Part 18 PSD rules package. However, the lack of this language has caused uncertainty among the stakeholders, so clarifying language has been included in Part 19. The AQD anticipates that, under a future rulemaking, the language in Rule 1910 will be moved to Part 17, Hearings, of the Air Pollution Control Rules, and Rules 1910 and 1830 will be rescinded.

Additional Information Received and Associated Proposed Changes

Two significant changes have been made to the Part 19 rules since the December 20, 2006, public hearing. The first of these changes is the addition of the definition “replacement unit” under the definition for “emissions unit” in Rule 1901(o). This change is proposed because the definition was inadvertently omitted in the original proposal because it was the DEQ's understanding that all federal requirements relating to routine maintenance, repair and replacement were stayed by a court decision. The DEQ has since learned that this was not the case.

The second change affects Rule 1901(v), which is the definition for “net emissions increase.” While working with the new Part 18 PSD rules, the DEQ identified that this definition was not identical to the federal requirements. The definition for “net emissions increase” found in both the Part 18 PSD rules and draft Part 19 rules is more restrictive. This was not the DEQ's intent. While the definition for “net emissions increase” will be changed in the Part 18 PSD rules during a future rulemaking, the Part 19 definition for “net emissions increase” is proposed to be amended at this time so that it also mirrors the federal requirements.

Each of the draft Part 19 rules are summarized as follows:

R 336.2901 Definitions

This new rule will replace Rule 220, which contains the nonattainment requirements that are currently effective in Michigan. This rule contains definitions for terms used in Part 19's nonattainment permitting program. These definitions apply to terms used in Part 19 only. If a term used in Part 19 is not defined in Rule 1901, then the definition from Part 1 applies. If the term is also not defined in Part 1, then the common understanding should be used.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165 — the federal minimum requirements for state nonattainment permitting programs. Several other minor wording changes were made to meet state rule promulgation requirements. No substantive changes were made from the federal requirements.

R 336.2901a Adoption by reference

This new rule adopts a number of documents by reference for the sole purpose of clarifying the definitions in these rules.

R 336.2902 Applicability

This new rule will also replace R 336.1220, which contains the applicability requirements for the federal nonattainment rule currently effective in Michigan. This rule defines the applicability of the Part 19 nonattainment permitting program. The rule applies to the construction of any new major stationary source or major modification that is major for the pollutant for which the area in which the proposed major stationary source or major modification is designated as a nonattainment area. The rule states that major modifications occur when a project causes a significant increase in an air pollutant.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(a)(2), (a)(4), (a)(5), (a)(6), (a)(7) and (a)(8) – the federal minimum requirements for state nonattainment permitting programs. No substantive changes were made from the federal requirements.

R 336.2903 Additional permit requirements for nonattainment areas

This new rule defines the permitting requirements for new major stationary sources or major modifications to sources that are located in any area designated as attainment or unclassifiable for any National Ambient Air Quality Standard but impacting a nonattainment area.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(b) – the federal minimum requirements for state nonattainment permitting programs. No substantive changes were made from the federal requirements.

R 336.2907 Actuals plantwide applicability limits or PALs

This new rule defines Plantwide Applicability Limits (PALs) and contains the applicability requirements for new or existing major stationary sources that choose to accept a federally enforceable PAL.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(f) – the federal minimum requirements for state nonattainment permitting programs. No substantive changes were made from the federal requirements.

R336.2908 Conditions for approval of a major new source review permit in a nonattainment area.

This new rule consolidates the requirements an applicant must meet to obtain a new source review permit for a source located in a nonattainment area. The requirements consolidated under this rule include Lowest Achievable Emission Rate (LAER), offsets and an analysis of alternative sites, sizes, production processes and environmental control techniques.

With the exception of some formatting changes, these rules are identical to 40 C.F.R. §51.165(a)(3), (a)(9) and (a)(10) – the federal minimum requirements for state nonattainment permitting programs. These rules are also identical to the Clean Air Act, Title I, Part D, Section 173 (a)(1), (a)(2), (a)(3) and (a)(5). No substantive changes were made from the federal requirements.

R 336.2910 Administrative hearings

This new rule is intended to provide a parallel appeal procedure to the one that is currently in place for the federal nonattainment program that is effective in 40 C.F.R. §124.

The rule creates a right to an administrative hearing before a state administrative law judge that is similar to the current appeal rights under the federal PSD permitting program. Rule 1910 is not intended to be submitted as part of Michigan's SIP.

4. Name of newspapers and date of publication in newspapers (minimum 3 newspapers of general circulation, representing different parts of the state, one of which must be located in the Upper Peninsula):

The notice for the December 20, 2006, public hearing was published November 16, 2006, in the following newspapers:

- Lansing State Journal
- Grand Rapids Press
- Pontiac Oakland Press
- Marquette Mining Journal

The notice for the July 19, 2007, public hearing was published June 11, 2007, in the following newspapers:

- Lansing State Journal
- Pontiac Oakland Press
- Marquette Mining Journal

5. Time, date, location and duration of public hearings:

December 20, 2006; 10:00-10:35 a.m.; Constitution Hall, 525 West Allegan Street, Lansing

July 19, 2007, 10:00-10:50 a.m., Constitution Hall, 525 West Allegan Street, Lansing

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

November 15, 2006, for the December 20, 2006, public hearing

June 15, 2007, for the July 19, 2007, public hearing

7. Agency representative(s) attending hearing (include agency name and title of representative[s]):

The following attended the December 20, 2006, public hearing:

Bryce Feighner, Supervisor, Chemical Process Unit, Permit Section, AQD
Lynn Fiedler, Supervisor, Permit Section, AQD
Mary Ann Halbeisen, Administrative Rules Coordinator, AQD
Marion Hart, Supervisor, Administration Section, AQD
Jeffrey Rathbun, Engineer, Permit Section, AQD
Holly Gohlke, Environmental Quality Analyst, Water Bureau
James Ostrowski, Environmental Quality Analyst, Environmental Science and Services Division

The following attended the July 19, 2007, public hearing:

Mary Ann Dolehanty, Supervisor, Thermal Process Unit, AQD
Mary Ann Halbeisen, Administrative Rules Coordinator, AQD
Asadullah Khan, Environmental Engineer, AQD
Steve Kish, Environmental Engineer Specialist, AQD
Susan Maul, DEQ Regulatory Reform Officer
Mary Maupin, Environmental Quality Specialist, AQD
Jeffrey Rathbun, Environmental Engineer, AQD
Barbara Rosenbaum, Supervisor, Air Quality Evaluation Section, AQD
Teresa Walker, Environmental Quality Analyst, AQD

8. Names, organizations and (complete) addresses of persons attending the hearing:

The following attended the December 20, 2006, public hearing:

Kent Evans, Director, Air Quality Services, Consumers Energy, 1945 West Parnell Road, Jackson, MI 49201
Mike Johnston, Director of Regulatory Affairs, Michigan Manufacturers Association, 620 Capitol Avenue, Lansing, MI 48933
Angela Riess, Michigan Department of Agriculture, 525 West Allegan Street, Lansing, MI 48933

No one attended the July 19, 2007, public hearing.

9. Persons submitting letters, comments and testimony of support:

The following comments were submitted for the December 20, 2006, public hearing:

- Julie C. Becker, Alliance of Automobile Manufacturers, 1401 Eye Street, NW, Suite 900, Washington, DC 20005-6562
- Kent Evans, Director, Air Quality Services, Consumers Energy
- Jason M. Prentice, Consumers Energy
- Mike Johnston, Director of Regulatory Affairs, Michigan Manufacturers Association

The following comments were submitted for the July 19, 2007, public hearing:

- Melissa Trustman, Director, Government Relations, Detroit Regional Chamber, One Woodward Avenue, Suite 1900, P.O. Box 33840, Detroit, MI 48232-0840
- Michael Johnston, Director of Regulatory Affairs, Michigan Manufacturers Association, 320 South Capitol Avenue, Lansing, MI 48933-4247

10. Persons submitting letters, comments and testimony for changes:

The following submitted comments for the December 20, 2006, public hearing:

- Julie C. Becker, Alliance of Automobile Manufacturers, 1401 Eye Street, NW, Suite 900, Washington, DC 20005-6562
- Kent Evans, Director, Air Quality Services, Consumers Energy
- Jason M. Prentice, Consumers Energy
- Mike Johnston, Director of Regulatory Affairs, Michigan Manufacturers Association

The following submitted comments for the July 19, 2007, public hearing:

- Dennis J. Karl, Regional Manager, Environmental Quality Office, Ford Motor Company, Three Parklane Boulevard, Suite 950 West, Dearborn, MI 48126
- Laura L. Cossa, Region V, U.S. Environmental Protection Agency (U.S. EPA), 77 West Jackson Boulevard, Chicago, IL 60604-3507

11a. Summary of suggestions to modify proposed rules from December 20, 2006, hearing:

R 336.2901(z) and R 336.2907(1)(b)(ii)

Comment: The DEQ received three similar comments regarding the definition for “potential to emit.” Continuing the theme of uniformity with federal law for competitive reasons, the definition of “potential to emit” should clearly limit enforceability to the state level, ensuring enforceability as a practical matter and not handing that authority over Michigan sources to the federal government. In the wake of the U.S. Court of Appeals Decision in *Clean Air Implementation Project v. EPA No. 96-1224 (D.C. Cir. 1996)*, the EPA eliminated this requirement and Michigan should not individually hand it back to them.

AQD Response: The AQD agrees with this comment and has changed the term of “federally enforceable” to “legally enforceable” in R 336.2901(z) and R 336.2907(1)(b)(ii) because of this comment.

R 336.2902(6)(f)

Comment: The DEQ received three similar comments regarding the definition of “reasonable possibility.” In light of the opinion in *New York I*, DEQ has included a definition of the term “reasonable possibility” in its proposed rule, R 336.2902(6)(f). Certain recordkeeping and reporting requirements apply to projects for which there is a reasonable possibility that an increase greater than the applicable significance level may occur. The Department proposes that a reasonable possibility exists when the source is otherwise triggering the requirement to obtain a minor NSR permit. While we believe that many projects that require minor NSR permits do not have a reasonable possibility of causing a significant emissions increase, we understand that the Department is trying to establish an easily implemented test that sources and DEQ permitting staff can apply to determine when the recordkeeping/reporting requirements apply. Given the remand by the Court in *New York I*, we believe that the Department could wait for EPA to complete its rulemaking to define reasonable possibility. To the extent that EPA adopts a different test for reasonable possibility in the future, however, the Department should revise this rule to reflect that test as appropriate.

AQD Response: The AQD believes that we already have a mechanism in place (R 336.1278 through R 336.1290) that addresses the requirements of keeping records if there is a reasonable possibility of an increase that is greater than applicable significance levels. These rules are well understood by the regulated community and are consistent with one of the two EPA proposals for defining the test of determining reasonable possibility. The AQD will not make any changes to the definition of reasonable possibility at this time, but if we deem it necessary to make a change once EPA promulgates new language, we will re-open these rules to make the change at that time.

R 336.2901(s)(iii)(E)(2)

Comment: Lines 215 & 216: Comprise citation R 336.2901(s)(iii)(E)(2), and corresponds to federal rule 51.165(a)(1)(v)(C)(5)(ii). The corresponding federal rule references a permit issued under the nonattainment new source review (NA-NSR) rules. Therefore, for purposes of consistency with the federal rule, R 336.2901(s)(iii)(E)(2) should be revised as follows:

(2) The source is approved to use under any permit issued under R 336.1201(a) ~~220~~ or R 336.2902.

AQD Response: The AQD disagrees with the comment. Any permit to install issued by the AQD is issued under the authority of R 336.1201(a), regardless of whether the facility is located in a nonattainment area.

R 336.2901(s)(iv)

Comment: Lines 228 to 231: Comprise citation R 336.2901(s)(iv), and corresponds to federal rule 51.165(a)(1)(v)(D). For purposes of consistency with the associated federal rule, R 336.2901(s)(iv) should be revised as follows:

(iv) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements of R 336.2907 for a plantwide applicability limit for that pollutant. Instead, the definition in R 336.2907(1)(h) shall apply.

AQD Response: The AQD agrees with this comment and has made the change as described.

R 336.2901(bb)

Comment: Lines 381 to 383: Comprise citation R 336.2901(bb), and corresponds to federal rule 51.165(a)(1)(xli). For purposes of consistency with the associated federal rule, R 336.2901(bb) should be revised as follows:

(bb) "Prevention of significant deterioration " or "PSD "permit means any permit that is issued under R 336.2802 or the prevention of significant deterioration of air quality regulations ~~or~~ under 40 C.F.R. §52.21, adopted by reference in R 336.2901a.

AQD Response: The AQD agrees with this comment and has made the change as described.

R 336.2901(ee)(ii)

Comment: Line 415: Comprises citation R 336.2901(ee)(ii), and corresponds to federal rule 51.165(a)(1)(xxxvii)(B). The associated federal rule references any pollutant for which a national ambient air quality standard has been promulgated. Rather than take this approach, the current Michigan draft rule lists specific pollutants (ozone, sulfur dioxide, oxides of nitrogen, PM-10, lead and carbon monoxide). This approach seems problematic in that any time a national ambient air quality standard is developed for a pollutant that was not previously regulated, it will

be necessary to revise R 336.2901(ee)(ii). Furthermore, the rule should list nitrogen dioxide rather than oxides of nitrogen, and the rule does not include PM-2.5. In order to maintain consistency with the federal rule, R 336.2901(ee)(ii) should be revised as follows:

(ii) Any pollutant for which a national ambient air quality standard has been promulgated. ~~Ozone, sulfur dioxide, oxides of nitrogen, Pm-10, lead and carbon monoxide.~~

AQD Response: The AQD agrees with this comment and has made the change as described.

R 336.2901(gg)(i)(A) through (E)

Comment: Lines 435 to 439: Comprise citation R 336.2901(gg)(i)(A) through (E), and corresponds to federal rule 51.165(a)(1)(x)(A). The corresponding federal rule lists significant emission rates for carbon monoxide, nitrogen oxides, sulfur dioxide, ozone, lead and PM-10. The proposed rule currently does not include a significant emission rate for PM-10. Therefore, R 336.2901(gg)(i)(F) should be added in order to list a significant emission rate for PM-10. The proposed regulatory text is as follows:

(F) PM-10: 15 tons per year of PM-10.

AQD Response: The AQD agrees with this comment and has made the change as described.

R 336.2902(2)

Comment: Lines 516 & 517 - Comprise citation R 336.2902(2), and corresponds to federal rule 51.165(a)(2)(ii). The current proposed rule language includes the term "offset" in the context of a major source. The term "major offset source" is not defined within the Part 1 or Part 19 Rules, nor is it used anywhere else within the Part 19 rule. Therefore, R 336.2902(2) should be revised as follows:

(2) This part applies to the construction of new major ~~offset~~-sources and major modifications to existing sources as follows:

AQD Response: The AQD agrees with this comment and has made the change as described.

R 336.2902(2)(d)

Comment: Lines 538-544: Comprise citation R 336.2902(2)(d), and corresponds to federal rule 51.165(a)(2)(ii)(D). The current proposed rule language includes the term "reconstruction" in the context of a change to an existing emissions unit. The federal NA-NSR rules do not include the concept of reconstruction, and R 336.2902(2)(d) should be revised as follows:

*(d) The actual-to potential test may be used for projects that involve construction of new emissions units or modification ~~or reconstruction~~ of existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new **and** modified, ~~or reconstructed~~ emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.*

AQD Response: The AQD agrees with this comment and has made the change as described.

R 336.2903(2)

Comment: Lines 683-684: Comprise Table 191 of R 336.2903(2), and corresponds to the table associated with federal rule 51.165(b)(2). Table 191 in the proposed rule lists oxides of nitrogen. However, to be consistent with the federal rule, the Table 191 should actually list nitrogen dioxide rather than oxides of nitrogen, as there are no national ambient air quality standards for oxides of nitrogen. Thus, Table 191 should be revised as follows:

~~Oxides of nitrogen~~ **Nitrogen Dioxide**

AQD Response: The AQD agrees with this comment and has made the change as described. Also, to be consistent with the federal regulations, the AQD has changed the term "oxides of nitrogen" to nitrogen oxides" in the following rules: R 336.2901(ee)(i), R 336.2901(gg)(i)(B), R 336.2902(1)(b), R 336.2907(2)(b) and R 336.2907(6)(a).

R 336.2907(4)(a)(i)

Comment: Lines 783-792: Comprise R 336.2907(4)(a)(i), and corresponds to federal rule 51.165(f)(4)(i)(A). Although the language of this proposed rule is consistent with the federal rule, the proposed rule references a "12-month average, rolled monthly," which is then compared to the PAL (expressed in tons per year). In reviewing both the draft rule and the underlying federal rule, it appears as though the language should actually be a "12-month total, rolled monthly." Therefore, R 336.2907(4)(a)(i) should be revised as follows:

*(i) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average **total**, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.*

AQD Response: The AQD agrees with this comment and will make the change as described.

R 336.2907(4)(ii)

Comment: Lines 793-794: Comprise R 336.2907(4)(a)(ii), and corresponds to federal rule 51.165(f)(4)(i)(B). In order to maintain consistency with the federal rule, the term "permit to install" within the proposed rule should be replaced with "PAL permit." Therefore, R 336.2907(4)(a)(ii) should be revised as follows:

*(ii) The PAL shall be established in a ~~permit to install~~ **PAL permit** that meets the public participation requirements in subrule (5) of this rule.*

AQD Response: The AQD does not agree with this change. Any NSR/nonattainment air permit issued by the AQD is issued as a Permit to Install. Therefore, a permit issued with a PAL limit will be a permit to install for a facility seeking PAL status.

R 336.2907(8)(b)(i)(B)

Comment: Lines 873-874: Comprise R 336.2907(8)(b)(i)(B), and corresponds to federal rule 51.165(f)(8)(ii)(A)(2). The federal rule references creditable emissions reductions "for use as offsets under 51.165(a)(3)(ii)." For purposes of clarification, proposed R 336.2907(8)(b)(i)(B) should be revised to be consistent with the federal rule (Note: R 336.2908(5)(b) is equivalent to 51.165(a)(3)(ii)).

*(B) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets **under R 336.2908(5)(b)**.*

AQD Response: The AQD agrees with this comment and will make a change but AQD believes that along with citing R 336.2908(5)(b) we should also cite R 336.2908(5)(c) through (h) because (c) through (h) all come from 51.165(a)(3)(ii).

R 336.2908(3)

Comment: Lines 1155-1157: Comprise citation R 336.2908(3), and corresponds to the federal Clean Air Act (CAA), Title 1, Part D, Section 173(a)(2). For purposes of clarification, proposed R 336.2908(3) should be revised as follows:

*(3) The major stationary source or major modification shall comply with the lowest achievable emissions rate for each regulated new source review pollutant for which the area is designated as nonattainment **and for which there is both a significant emissions increase and a significant net emissions increase.***

AQD Response: The AQD does not agree with this comment, adding the language is redundant, because this language is already included in the definitions for major stationary source and major modification.

R 336.2908(5)(c)(ii)

Comment: Lines 1203-1206: Comprise citation R 336.2908(5)(c)(ii), and corresponds to federal rule 51.165(a)(3)(ii)(C)(2). The federal rule states that the emissions reductions must meet the requirements in 51.165(a)(3)(ii)(C)(1)(ii). The current proposed rule references R 336.2908(5)(c)(i)(A), which is equivalent to federal rule 51.165(a)(3)(i)(C)(1)(i). To maintain consistency with the underlying federal rule, R 336.2908(5)(c)(ii) should be revised as follows:

(ii) Emissions reductions that are achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements of R 336.2908(5)(c)(i)(A)(B) may be generally credited only if meet either of the following:

AQD Response: The AQD agrees with this comment and will make the change as specified.

11b. Summary of suggestions to modify proposed rules from July 19, 2007, hearing:

R 336.2901(v)

Comment: Regarding R 336.2901(v), one commenter has requested the AQD change the definition of “net emissions increase” to clarify the proper procedure for calculating the magnitude of a contemporaneous increase or decrease. This change is based on the difference of using “baseline actual emissions” versus “allowable emissions” in the calculation. Both of these terms are defined in the rules. The commenter requested the changes as follows:

(v) “Net emissions increase” means all of the following:

(i) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under R 336.2902(2).

(B) Any other increases and decreases in actual emissions at the major stationary source that occur within the contemporaneous period and are otherwise creditable.

(ii) The contemporaneous period must meet all of the following:

(A) Begins on the date 5 years before construction on the particular change commences.

(B) Ends on the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit under R 336.1201(1)(a) or R 336.1214a, which permit is in effect when the increase in actual emissions from the particular change occurs.

*(iv) The magnitude of a creditable, contemporaneous increase in actual emissions is determined by the amount that the ~~new level of actual emissions~~ **allowable emissions** following the increase exceeds the emissions unit’s baseline actual emissions prior to the increase. This means ~~actual~~ **allowable** emissions and baseline actual emissions are determined from the date of the*

contemporaneous increase. Baseline actual emissions shall be determined as provided in the definition of baseline actual emissions, except that paragraphs (b)(i)(C) and (b)(ii)(D) of this subdivision shall not apply.

(v) A contemporaneous decrease in actual emissions is creditable only to the extent that all of the following occur:

(A) The magnitude of a creditable contemporaneous decrease is determined by the lower of the following:

(1) The amount by which the emission unit's baseline actual emissions prior to the decrease exceed the level of ~~actual~~ **allowable** emissions following the decrease.

(2) The amount by which the emission unit's allowable emissions prior to the decrease exceed the level of ~~actual~~ **allowable** emissions following the decrease.

(3) In determining the magnitude of a creditable contemporaneous decrease, ~~actual~~ **allowable** emissions and baseline actual emissions are determined from the date of the contemporaneous decrease. Baseline actual emissions shall be determined as provided in the definition of baseline actual emissions except that paragraphs (b)(i)(C) and (b)(ii)(D) of this subdivision shall not apply.

(B) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

(C) The department has not relied on it in issuing any permit under R 336.1201(1)(a) or R 336.1214a.

(D) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

~~(vii) The definition of actual emissions in R 336.1101(b) shall not apply for determining creditable increases and decreases after a change, instead the definitions of the terms "projected actual emissions" and "baseline emissions" shall be used.~~

AQD Response: The AQD agrees with this comment and has made the changes to the definition for "net emissions increase" as specified by the commenter.

R 336.2902(1)(b)

Comment: Regarding R 336.2902(1)(b), EPA asked what the applicable federal requirement is for this rule.

AQD Response: R 336.2902(1)(b) was written based on the requirements in 40 CFR §51.165, 2006 edition, pages 190 and 201.

R 336.2902(2)(d)

Comment: Regarding R 336.2902(2)(d), EPA asked what the applicable federal requirement is for this rule. The EPA believes the federal rule only applies to new emission units, but Rule 1902(2)(d) includes modifications of existing emissions units as well.

AQD Response: The AQD believes Rule 1902(2)(d) follows the requirements as specified in 40 CFR §51.165, 2006 edition, page 197. The AQD also believes that including modifications to existing emission units makes Rule 1902(2)(d) more stringent than the federal requirements.

R 336.2902(6)(f)

Comment: Regarding R 336.2902(6)(f), EPA asked what the applicable federal requirement is for this rule. Also, R 336.1278 through R 336.1290 are referenced but these rules are not SIP approved.

AQD Response: The AQD believes Rule 1902(6)(f) follows the requirements as specified in 40 CFR §51.165, 2006 edition, page 204. The AQD also believes that referencing the state only exemption (Rules 278–290) does not make Rule 1902(6)(f) any less stringent than the federal requirements.

R 336.2907(14)(b)

Comment: Regarding R 336.2907(14)(b), EPA asked if the reference to R 336.1213(3)(c)(i) should be R 336.1213(3)(c)(ii) instead. Also, can the AQD include the requirements of Rule 213(3)(c)(ii) in Rule 1907(14)(b), since Rule 213(3)(c)(ii) is not SIP approved.

AQD Response: The AQD agrees with the first part of the comment and will change the reference to R 336.1213(3)(c)(ii) as follows. The AQD does not agree with the second part of the comment and will not include the requirements of Rule 213(3)(c)(ii) since these requirements are already in Rule 213(3)(c)(ii). The EPA has allowed Michigan to reference rules that were not SIP approved in previous SIP submittals. The AQD does not believe this situation should be treated any differently.

*(b) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under R 336.1213(3)(c)(~~i~~**ii**) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the source's renewable operating permit. The reports shall contain all of the following information:*

R 336.2908(4)

Comment: Regarding R 336.2908(4), EPA asked what the applicable federal requirement is for this rule. The EPA does not believe Rule 1908(4) follows the federal requirements because in one part of this rule the word “or” is used but it should be an “and” because this part should not be an option.

AQD Response: The AQD believes Rule 1908(4) follows the requirements of the Clean Air Act, Section 173(a)(3), but with one minor change. The AQD has changed the “or” to “and” to make this rule as stringent as the federal requirements.

*(4) All stationary sources which have a potential to emit 100 or more tons per year of any air contaminant regulated under the clean air act, which are located in the state, and which are owned or controlled by the owner, operator, or an entity controlling, controlled by, or under common control with, the owner or operator of the proposed major stationary source or major modification shall be in compliance with all applicable local, state, and federal air quality regulations ~~or~~ **and** shall be in compliance with a legally enforceable permit condition or order of the department specifying a plan and timetable for compliance.*

R 336.2908(5)(c)(i)

Comment: Regarding R 336.2908(5)(c)(i), EPA asked what the applicable federal requirement is for this rule. The EPA does not believe Rule 1908(5)(c)(i) follows the federal requirements.

AQD Response: The AQD believes Rule 1908(5)(c)(i) follows the requirements as specified in 40 CFR §51.165, 2006 edition, page 20.

R 336.2908(5)(h)

Comment: Regarding R 336.2908(5)(h), EPA asked what the applicable federal requirement is for this rule. The EPA does not believe Rule 1908(5)(h) follows the federal requirements.

AQD Response: The AQD believes the intent of Rule 1908(5)(h) matches the requirements as specified in the Clean Air Act, Section 173(c). The AQD will add the words “at least” prior to the ratio of 1:1 at the end of this rule.

*(h) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. Unless specified otherwise in this rule, the offset ratio for each nonattainment air pollutant that will be emitted in significant amounts from a new major source or major modification located in a nonattainment area that is subject to subpart 1, part D, title 1 of the clean air act shall be **at least** 1:1.*

General Comments

Comment: The EPA asked why the definition for the term “federally enforceable” is not included in the Part 19 rules because it is defined in the CAA and under Section 173, the CAA requires some conditions to be “federally enforceable.”

AQD Response: The AQD does not believe this definition needs to be included in the Part 19 rules because the term “federally enforceable” is a federal definition and these rules are state rules that mirror the federal requirements. The AQD believes the term “legally enforceable” is more stringent than the term “federally enforceable” and has used “legally enforceable” throughout the Part 19 rules in place of “federally enforceable.”

Comment: The EPA asked why the term “pollution prevention” is not included in the Part 19 rules.

AQD Response: The AQD does not believe the term “pollution prevention” is necessary because this term is not used in any requirement within the Part 19 Rules and the federal requirements that this term is referenced in (Pollution Control Project and Clean Unit) were vacated by a court decision. Therefore, it is not necessary to include the term “pollution prevention” in the Part 19 rules.

Name of person completing this report:

Jeffrey Rathbun & Mary Ann Halbeisen

Date report completed:

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