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[FR Doc. 2016–30194 Filed 12–16–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2015–0845; FRL–9956–62–Region 5]

### Air Plan Approval; Michigan; Part 9 Miscellaneous Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving administrative revisions for incorporation into the Michigan’s State Implementation Plan (SIP). The submittal, by the Michigan Department of Environmental Quality (MDEQ) on December 21, 2015, makes minor corrections to Michigan’s Air Pollution Control Rules entitled “Emissions Limitations and Prohibitions—Miscellaneous.”

**DATES:** This rule is effective on February 17, 2017, unless EPA receives adverse written comments by January 18, 2017. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0845 at <http://www.regulations.gov> or via email to [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov). For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located

outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov).

#### 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 did Michigan submit?
- II. What action is EPA taking?
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

#### I. What did Michigan submit?

On December 21, 2015, MDEQ submitted a request to EPA to make minor administrative revisions to rules in Chapter 336, Part 9. The revisions are described below:

*R 336.1906 (rule 906)*—This existing rule requires notice to MDEQ for the placement of a device that dilutes or conceals emissions. MDEQ requests the rule that is currently in effect at the state level be incorporated into the SIP. The regulatory text of Michigan’s current rule, effective May 20, 2015, is identical to the text of the SIP approved rule, which became effective March 19, 2002. The only revision to the text is the effective date of the rule. Because there are no substantive changes to language in the current version of the rule promulgated at the state, EPA finds the 2015 version of rule 906 approvable into the SIP.

*R 336.1911 (rule 911) and R 336.1912 (rule 912)*—The provisions of these rules do not allow emissions or specifically limit emissions from a source, process equipment, or operation. In the existing rule 911, it requires a malfunction abatement plan in certain situations. A person responsible for the operation of a source of an air contaminant shall prepare a malfunction abatement plan to prevent, detect, and correct malfunctions or equipment failures resulting in emissions exceeding any applicable emission limitation. In this rule the

word “commission” was changed to “department.” Malfunction abatement plans are to be submitted to the department because the commission no longer exists.

The existing rule 912 addresses notification and reporting requirements of excess emissions resulting from either an abnormal condition, start-up, shutdown, or malfunction of a source, process equipment, or operation. In section 912(5b), the word “which” was changed to “that.”

Because there are no substantive changes to the language in rules 911 and 912, EPA finds the revisions acceptable for approval into the Michigan SIP.<sup>1</sup>

Overall, the revisions to Part 9 make minor corrections to rules 906, 911, and 912. The revisions are solely administrative, and do not make any substantive changes to the language in the rules. The revisions to these rules will not increase emissions of pollutants into the atmosphere.

#### II. What action is EPA taking?

EPA is approving the December 21, 2015, request to revise Michigan’s air pollution control rules in Part 9. The revisions will not increase emissions of pollutants into the atmosphere.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 17, 2017 without further notice unless we receive relevant adverse written comments by January 18, 2017. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective February 17, 2017.

<sup>1</sup> On June 12, 2015 (80 FR 33840), EPA finalized a SIP Call to address deficient SIP provisions regarding emissions during facility start-up, shutdown, and malfunctions. In this SIP Call, Michigan was required to revise a rule which allowed an affirmative defense for excess emissions during start-up or shutdown. The SIP Call did not include rule 911 or 912. These two rules address only planning and reporting requirements. Thus, they comply with EPA’s policy on start-up, shutdown, and malfunctions.

**III. 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. 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 CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup> EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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);
- 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2017. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 2, 2016.

**Robert A. Kaplan,**  
*Acting 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:  
**Authority:** 42 U.S.C. 7401 *et seq.*
- 2. In § 52.1170, the table in paragraph (c) is amended by revising the entries for R 336.1906, R 336.1911, and R 336.1912 under the heading “Part 9. Emission Limitations and Prohibitions—Miscellaneous” to read as follows:

**§ 52.1170 Identification of plan.**  
\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED MICHIGAN REGULATIONS**

Michigan citation	Title	State effective date	EPA approval date	Comments
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<sup>2</sup> 62 FR 27968 (May 22, 1997).

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
<b>Part 9. Emission Limitations and Prohibitions—Miscellaneous</b>				
R 336.1906	Diluting and concealing emissions	5/20/2015	12/19/2016 [insert Federal Register citation].	*
R 336.1911	Malfunction abatement plans	5/20/2015	12/19/2016 [insert Federal Register citation].	*
R 336.1912	Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements.	5/20/2015	12/19/2016 [insert Federal Register citation].	*
*	*	*	*	*

[FR Doc. 2016–30195 Filed 12–16–16; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA–R05–OAR–2016–0277; FRL–9956–95–Region 5]

**Reclassification of the Sheboygan, Wisconsin Area To Moderate Nonattainment for the 2008 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that the Sheboygan, Wisconsin area (Sheboygan County) has failed to attain the 2008 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2016, and that this area is not eligible for an extension of the attainment date. Thus, EPA is reclassifying this area as “moderate” nonattainment for the 2008 ozone NAAQS. The State of Wisconsin must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to areas classified as moderate nonattainment for the 2008 ozone NAAQS by January 1, 2017.

**DATES:** This final rule is effective December 19, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0277. All documents in the docket are listed in the <http://www.regulations.gov> Web

site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information 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 <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:** Kathleen D’Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

**I. What is being addressed in this document?**

Clean Air Act (CAA) section 181(b)(2) requires EPA to determine, based on an area’s ozone design value<sup>1</sup> as of the area’s attainment deadline, whether the area has attained the ozone standard by that date. The statute provides a

<sup>1</sup> An area’s ozone design value for the eight-hour ozone NAAQS is the highest three-year average of the annual fourth-highest daily maximum eight-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most recent three years with complete, quality-assured monitored ozone data prior to the attainment deadline.

mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a one-year extension of an area’s attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next “highest” classification (*e.g.*, marginal to moderate, moderate to serious, *etc.*) or to the classifications applicable to the areas’ design values.

On April 30, 2012, the Sheboygan area was designated as nonattainment for the 2008 ozone NAAQS and was classified as marginal, effective July 20, 2012 (77 FR 30088, May 21, 2012). Wisconsin submitted a letter to EPA requesting a one-year extension of the attainment deadline for the Sheboygan area under section 181(a)(5) of the CAA. In that letter, Wisconsin certified that the State had complied with all requirements and commitments pertaining to the Sheboygan area in the SIP and that all monitors in the area had a fourth highest daily maximum 8-hour average of 0.075 parts per million (ppm) or less for 2014 (*i.e.*, the last full year of air quality data prior to the July 20, 2015, attainment date). On May 4, 2016 (81 FR 26697), based on EPA’s evaluation and determination that the area met the attainment date extension criteria of CAA section 181(a)(5), EPA granted the Sheboygan area a one-year extension of the marginal area attainment date to July 20, 2016.

Wisconsin did not request a second one-year extension for the Sheboygan area, and the area would not have qualified for one under CAA section 181(a)(5) because, at 0.076 ppm, the average of the 2014 and 2015 annual fourth highest daily maximum eight-