

State Office of Administrative Hearings and Rules

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REGULATORY IMPACT STATEMENT

The department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the State Office of Administrative Hearings and Rules no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions may be made to soahr_rules@michigan.gov. The SOAHR will review the regulatory impact statement and send its response to the agency (see last page).

A. GENERAL

1. SOAHR #, title, and rule numbers (or rule set range of numbers):

2004-007EQ to amend Part 2, Air Use Approval, by revising R 336.1201, R 336.1202, R 336.1205, R 336.1207, R 336.1211, R 336.1214, R 336.1214a, R 336.1219, R 336.1240, R 336.1241, R 336.1278, R 336.1281, R 336.1284, R 336.1285, and R 336.1288; adding R 336.1277; and rescinding R 336.1220.

2. Identify the relationship of the rule to state and federal statutes and regulations:

These rules are being amended as authorized by Sections 5503, 5505 and 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). These rules do not conflict with or duplicate any other rule. These rules are being modified to be consistent with the rules in 2004-054EQ.

3. Identify how the rule compares to an industry standard set by a state or national licensing organization.

This rules package will rescind R 336.1220, because it is made obsolete by rules package SOAHR #2004-054EQ, which contains rules that will mirror the current federal standards for "Major New Source Review (NSR)" (the permitting of new or modified large sources of air pollution) set forth by the U.S. Environmental Protection Agency (EPA). Also, this rules package contains updated citations to federal requirements for the state's renewable operating permit program.

4. Is the rule more restrictive or less restrictive than the federal rule or industry standard?

All of the changes in this rule package are either mandated by federal standards or, in the case of the exemptions, allowed by federal standards, so they are neither more nor less restrictive than the federal standard.

5. What are the sanctions on the state if the rule is not adopted?

The state will have to rely on an outdated rule if the new rules are not adopted. The new

rules provide more regulatory flexibility than the state's current rules. Rule 220 is being deleted because it conflicts with the new rules in SOAHR #2004-005EQ. The changes in SOAHR #2004-054EQ 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 and 40 C.F.R. 51.166) by January 2, 2006. This mandate, which is called a "SIP Call" was published in the *Federal Register* on December 31, 2002, at 67 F.R. 80186, 80240-41. If R 336.1220 is not rescinded, Michigan may face sanctions for not meeting the requirements of the SIP Call. These sanctions could include a moratorium on new construction, a loss of grant funding, and a loss of highway funds.

Also, if Michigan does not adopt the changes to its renewable operating permit rules, its renewable operating permit program will not meet federal Clean Air Act Title V standards. Michigan could face sanctions, including loss of grant and fee revenue and the EPA's implementation of a federal operating permit program.

B. GOAL OF RULE:

6. Identify the conduct and its frequency of occurrence that the rule is designed to change:

The rules are intended to delete obsolete requirements, update citations, and add exemptions from permitting. They are not intended to change conduct.

7. Identify the harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The state will have to rely on an outdated rule if the new rules are not adopted. The new rules provide more regulatory flexibility than the state's current rules. Rule 220 is being rescinded, because it conflicts with the new rules in SOAHR #2004-005EQ. The changes in SOAHR #2004-054EQ are necessary to satisfy the EPA SIP Call. If R 336.1220 is not rescinded, Michigan may face sanctions for not meeting the requirements of the SIP Call. These sanctions could include a moratorium on new construction, a loss of grant funding, and a loss of highway funds.

Also, if Michigan does not adopt the changes to its renewable operating permit rules, its renewable operating permit program will not meet federal Clean Air Act Title V standards. Michigan could face sanctions, including loss of grant and fee revenue and the EPA's implementation of a federal operating permit program.

8. Estimate the change in the frequency of the targeted conduct expected from the rule change:

Because the new rules contain more flexible applicability requirements, a slight decrease in applications may result.

9. Identify any alternatives to regulation by rule that would achieve the same or similar goals:

The Department of Environmental Quality (DEQ) could relinquish its renewable operating permit program. It would then be implemented by the EPA. Neither the

industrial community nor the environmental community supports this option. Also, if the state does not rescind R 336.1220, it will have to rely on an outdated rule to implement its federally mandated NSR program. R 336.1220 is being rescinded, because it conflicts with the new rules in SOAHR #2004-005EQ. The new rules provide more regulatory flexibility than the state's current rules. The changes in SOAHR #2004-054EQ are also necessary to satisfy the EPA SIP Call. If R 336.1220 is not rescinded, Michigan may face sanctions for not meeting the requirements of the SIP Call. These sanctions could include a moratorium on new construction, a loss of grant funding, and a loss of highway funds

10. Discuss the feasibility of establishing a regulatory scheme within the industry independent of state intervention:

The only partial alternative would be federal implementation of the renewable operating permit program.

C. COSTS TO GOVERNMENT UNITS:

11. Estimate the cost of rule imposition on the department or agency promulgating the rule, including the costs of equipment, supplies, labor, and increased administrative costs for initial imposition of the rule and any ongoing monitoring:

Because the DEQ is already implementing these programs based on outdated rules and federal delegation of authority, these rules will not result in additional costs to the DEQ.

12. Estimate the cost of rule imposition on other state or local governmental agencies, including the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring:

There will be no additional costs to other state or local government agencies.

D. COSTS TO REGULATED INDIVIDUALS:

13. Estimate the actual statewide compliance costs of the rule to individuals, including the costs of education, training, application fees, examination fees, license fees, new equipment or increased labor, exclusive of those costs identified in section C above:

There are no statewide compliance costs to individuals in terms of the costs of education, training, application fees, examination fees, license fees, new equipment or increased labor.

14. Identify any compliance costs requiring reports and the estimated cost of their preparation by individuals who would be required to comply with the rule:

There are no additional reports required by the changes.

15. Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses individuals will incur in complying with the rule:

There will not be any legal, consulting, and accounting services, or any other administrative expenses that individuals will incur.

16. Estimate the number of individuals the rule affects:

The proposed changes do not directly affect individuals.

17. Will the rule have a disproportionate impact on individuals based on their geographic location?

The rules do not apply to individuals.

E. COSTS TO BUSINESSES:

18. Estimate the actual statewide compliance costs of the rule to specifically include small businesses, including the costs of equipment, supplies, labor, training, application fees, permit fees, supervisory costs, exclusive of those identified in sections C and D above:

There will be no additional cost to business as a result of these rules, because they replace an existing state/federal permitting program.

19. Identify any reports the rule requires and the estimated cost of their preparation by businesses; specifically include small businesses:

These state rules will result in no additional reports.

20. Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses businesses will incur in complying with the rule; specifically include small businesses:

There will be no additional costs.

21. Estimate the number of businesses the rule affects:

The renewable operating program applies to approximately 420 major sources of air pollution. The NSR rules will only affect those major sources that are located in nonattainment areas if they intend to make a major change at the source.

22. Identify any disproportionate impact the rule may have on small businesses because of their size or geographic location:

Most of these rules only apply to large or "major" sources of emissions. The renewable operating permit and NSR portions of these rules will not have a disproportionate impact on small businesses because they will not apply to most small or "minor" sources of air emissions. The proposed exemptions may exclude some small businesses from permitting all together.

23. Discuss the ability of small businesses to absorb the costs estimated above without suffering economic harm and without adversely affecting competition in the marketplace:

The rules affecting the renewable operating permit and NSR programs are federal rules being adopted by the DEQ to allow state enforceability. An impact of the rules on affected sources has already been established in the federal rules, which determined they will not have any impact on small businesses.

The permit exemption rules will likely reduce costs for some small businesses by removing the permitting requirement for some small sources of air pollution.

24. Estimate the cost of the agency enforcing or administering the rule to exempt or set lesser standards for small businesses:

There will not be any additional cost for the DEQ to enforce or administer the rules or to exempt small businesses.

25. Determine the impact on the public interest of exempting or setting lesser standards for small businesses:

An impact of the rules on affected sources has already been established in the federal rules. Because these rules only apply to major sources of air emissions, they will not apply to small businesses. Thus, no exemptions for small businesses are necessary.

26. Explain how the agency reduced the economic impact of the rule on small businesses, as MCL 24.240 requires, or discuss why such a reduction was not feasible:

The rules affecting the renewable operating permit and NSR programs are federal rules being adopted by the DEQ to allow state enforceability. An impact of the rules on affected sources has already been established in the federal rules, which determined they will not have any impact on small businesses.

The permit exemption rules will likely reduce costs for some small businesses by removing the permitting requirement for some small sources of air pollution.

27. Discuss whether and how the agency has involved both industry and small business in the development of the rule:

A stakeholder group made up of industry representatives, environmental organizations, state agency employees, and individual citizens worked together to develop this rules package and came to a consensus that the rules are acceptable.

F. BENEFITS OF RULE:

28. Estimate the primary and direct benefits of the rule, including but not limited to the rule's impact on business competitiveness, the environment, worker safety, and consumer protection.

By adopting these rules, Michigan will obtain renewable operating permit and NSR programs that will meet all current federal requirements. This will provide greater

certainty for Michigan businesses that are sources of air pollution. It will also allow Michigan to avoid EPA sanctions for not meeting the requirements of the federal Clean Air Act.

29. Estimate the secondary or indirect benefits of the rule, including spin-off benefits to business, the environment, workers, and consumers:

These rules are federal rules being adopted by the DEQ to allow state enforceability. An impact of the rules on affected sources has already been established in the federal rules. The EPA estimates that the rules will be environmentally beneficial, because they will encourage maintenance and efficiency improvements. As a result of adopting these rules, Michigan could become more attractive to new businesses.

30. Are the direct and indirect benefits of the rule likely to justify the cost?

These rules are federal rules being adopted by the DEQ to allow state enforceability. The costs associated with adopting the new rules are negligible. The benefits described above outweigh these negligible costs.

31. Estimate the cost reductions to government, individuals, and businesses as a result of the rule:

There will be no cost reductions as a result of these rules, because the DEQ is already implementing these programs.

32. Estimate the increased revenues to state or local government units as a result of the rule:

There are no increased revenues to state or local governments.

33. Identify the sources you relied upon in calculating your cost and benefit responses:

There are no costs associated with the adoption of these rules.

Reviewed by Department Regulatory Affairs Officer:

Susan Maul

Reviewed by SOAHR Representative:

Norene Lind, Administrative Rules Manager

SOAHR Response:

Approval	<input checked="" type="checkbox"/>	
Disapproval	<input type="checkbox"/>	Explain:
More information needed	<input type="checkbox"/>	Explain:
Date: 6/8/06		SOAHR #: 2004-007EQ