

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):

2004-054EQ to add Part 19, New Source Review for Major Sources in Nonattainment Areas, R 336.2901, R 336.2902, R 336.2903, R 336.2907, R 336.2908, and R 336.2910.

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 are also a requirement of the federal Clean Air Act, 42 U.S.C. 7410, 7501 – 7509a, and 7511 – 7511b. These rules do not conflict with or duplicate any other rule.

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

The rules 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) in 40 CFR 51.165.

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

These rules mirror the federal standards, so they are neither more nor less restrictive than the federal standards.

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

The state will have to rely on outdated rules if the new rules are not adopted. The new rules provide more regulatory flexibility than the state’s current rules. These changes are also 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. 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.

B. GOAL OF RULE:

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

These rules apply to large sources of air pollution that will be installed or modified in areas where the ambient air does not meet federal air quality standards. Currently, 25 Michigan counties have been designated as not meeting the federal air quality standard for ground-level ozone, and 7 counties have been designated as not meeting the federal air quality standard for particulate matter that is less than 2.5 microns in diameter. R 336.1220 currently applies in these counties. To date, many sources have avoided the applicability of R 336.1220 by taking restrictions on their operations. The new rules contain the same stringent control technology and emission offset requirements as R 336.1220, but they provide additional optional applicability mechanisms.

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 rules assure that installations of large sources of air pollution include optimal pollution control equipment and will not harm public health. The rules also provide opportunity for public input before the installation or modification of large sources of air pollution in a nonattainment area.

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

The Air Quality Division estimates that some projects have been delayed or cancelled due to the uncertainty surrounding R 336.1220 and the EPA's December 31, 2002, SIP Call. The proposed rules will add certainty to the permitting process. They will also ensure that Michigan's nonattainment NSR permit rules are consistent with federal requirements and also with other states' permitting requirements.

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

The federal Clean Air Act mandates that states implement an NSR program in nonattainment areas (see 42 U.S.C. 7410(a)(2)(C)). The EPA could sanction Michigan if Michigan does not implement the rule changes required by the federal SIP Call. Sanctions could include a moratorium on new construction in the state, a loss of federal grant funds, and a loss of federal highway funds.

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

There is no alternative to establishing a regulatory scheme. The federal Clean Air Act mandates that states implement an NSR program in nonattainment areas (see 42 U.S.C. 7410(a)(2)(C)).

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:**

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 on other state or local governmental 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, because the rules do not apply to individuals.

- 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 to individuals, because the rules do not apply to individuals.

- 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, therefore they will not have a disproportionate

impact on individuals based on their geographic location.

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 not result in any additional reports to be prepared by businesses.

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 for legal, consulting, and accounting services, or any other administrative expenses that businesses would incur in complying with the rules.

21. Estimate the number of businesses the rule affects:

Approximately 420 major sources exist statewide, but the rule will only affect these sources if they intend to make a major change and they are located in a nonattainment area.

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

These rules are federal rules being adopted by the DEQ to allow state enforceability. These rules only apply to large or “major” sources of emissions. The rules will not have a disproportionate impact on small businesses, because they will not apply to most small or “minor” sources of air emissions.

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:

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, which determined they will not have any impact on small businesses.

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. These rules are federal rules being adopted by the DEQ to allow state enforceability. These rules affect major sources; therefore, there will not be an impact on 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:

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.

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

A stakeholder workgroup 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.

These rules include the EPA's recent "NSR Reforms." The federal government developed these changes to encourage improvements in efficiency at industrial plants without harming the environment. Michigan became one of the first states to implement these rules in certain counties in 2003. With these rules, the NSR Reforms will be available in all areas of the state.

Additionally, adopting these rules will meet the EPA's mandate (SIP Call) that all states adopt the requirements of 40 C.F.R. 51.165 into their State Implementation Plans (SIPs) by January 2, 2006. This SIP Call was published in the *Federal Register* on December 31, 2002, at 67 F.R. 80186, 80240-41. By adopting these rules, Michigan will avoid federal sanctions, including a moratorium on new construction in the state, a loss of federal grant funds, and a loss of federal highway funds.

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. Michigan could become more attractive to new businesses as a result of adopting these rules.

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 in VI-A and VI-B 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:

These rules are federal rules being adopted by the DEQ to allow state enforceability. Any cost and benefits were determined in the federal rulemaking process.

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 #: 2004-054EQ

(SOAHR-RIS June 2005)