

State Office of Administrative Hearings and Rules
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Lansing, MI 48909-8195
Phone (517) 335-2484 FAX (517) 335-6696

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):

SOAHR 2009-056SR and SOAHR 2010-022NE; Air Pollution Control Rules; Part 19, New Source Review for Major Sources Impacting Nonattainment Areas, R 336.2901 and R 336.2910 (Rules 1901 and 1910).

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

These rules have been developed as authorized by Sections 5503 and 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). R 336.2901 is being modified to include the new federal requirement for PM 2.5, specifically, a significance threshold. R 336.2910 is being rescinded because of a recent court ruling that provisions in the rule conflict with statutory provisions.

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

The rules do not follow an industry standard or licensing organization.

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

R 336.2901 is being modified to meet the federal rule, and R 336.2910 does not follow a federal rule or an industry standard.

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

There are no sanctions associated with these rule modifications.

B. GOAL OF RULE:

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

The U.S. Environmental Protection Agency (EPA) has revised the regulations pertaining to the Prevention of Significant Deterioration (PSD) by adding requirements for PM 2.5, specifically, a significance threshold. A significance threshold is established by the EPA to limit the applicability of the PSD regulations to larger sources, those above the significance level. PM 2.5 is a new standard with a new significance level. R 336.2901 is being modified to meet this federal requirement. R 336.2910 provides an administrative appeal mechanism for the PSD

or the New Source Review (NSR) program. It is being rescinded because of a recent court ruling that administrative appeals conflict with statutory provisions that instead provide a circuit court venue for appeals.

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:

If R 336.2901 is not revised, our NSR program will not meet all federal requirements. R 336.2910 is being rescinded because of a recent court ruling that provisions in the rule conflict with statutory provisions. This conflict will continue if the rule is not rescinded.

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

If R 336.2901 is not revised, Michigan's NSR program will not meet all federal requirements. Rescinding R 336.2910 will remove the conflict with statutory provisions.

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

An approved NSR program may be done through legislation. The rule rescission is the only way to eliminate the rule, removing the conflict with the statutory provisions.

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

A state rule or legislation is necessary for a state-approved NSR program. The rule rescission is the only way to eliminate the rule, removing the conflict with the statutory provisions.

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:

There will be no cost associated with these rule modifications.

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 cost associated with these rule modifications.

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 will be no cost associated with these rule modifications.

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 will be no cost associated with these rule modifications.

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 be no cost associated with these rule modifications.

16. Estimate the number of individuals the rule affects:

The rule modifications will not affect any individuals because the NSR program is already addressed in state rules.

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

The rule modifications will not affect any individuals because the NSR program is already addressed in state rules.

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 cost associated with these rule modifications.

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

There are no reports as a result of these rule modifications.

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 cost associated with these rule modifications.

21. Estimate the number of businesses the rule affects:

The rule modifications will not affect any individuals because the NSR program is already addressed in state rules.

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

The rule modifications will not affect any individuals because the NSR program is already addressed in state rules.

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:

There will be no cost associated with these rule modifications.

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

There will be no cost associated with these rule modifications.

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

The rule modifications will not affect any individuals because the NSR program is already addressed in state rules.

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:

There will be no cost associated with these rule modifications.

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

The rule modifications did not involve any industry or business. R 336.2901 was modified to include the new federal requirements for PM 2.5. R 336.2910 was deemed necessary because of a recent court ruling that the provisions in the rule conflict with statutory provisions.

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.

Modifying R 336.2901 will be a benefit because these revisions are necessary to meet the new federal requirement. Rescission of R 336.2910 will be a benefit because it eliminates provisions that are already addressed in statute.

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

Modifying R 336.2901 will be a benefit because these revisions are necessary to meet the new federal requirement. Rescission of R 336.2910 will be a benefit because it eliminates provisions that are already addressed in statute.

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

There will be no cost associated with these rule modifications.

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

There will be no cost associated with these rule modifications.

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

There will be no cost associated with these rule modifications.

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

There will be no cost associated with these rule modifications.

Reviewed by Department Regulatory Affairs Officer:

Susan Maul

Reviewed by SOAHR Representative:

Norene Lind, Administrative Rules Manager

SOAHR Response:

Date received: 5-25-10	
Approval	<input checked="" type="checkbox"/>
Disapproval	<input type="checkbox"/>
More information needed	<input type="checkbox"/>
Date approved: 5-25-10	
SOAHR #: 2010-022 NE and 2009-056 SR	

(SOAHR-RIS July 2006)