

# Response to Comments

## Air Pollution Control Rules, Part 6 Rule Revisions

### Introduction

The purpose of this document is for the Air Quality Division (AQD) to provide a response to public comments received on the 2022-018EQ Part 6 rule package addressing revisions to existing volatile organic compound (VOC) sources for ozone nonattainment areas. This document serves as a supplement to the official JCAR package posted on the [Michigan Department of Licensing and Regulatory Affairs – Administrative Rulemaking System website](#) and on the [Michigan Environmental Rules Review Committee \(ERRC\) website](#) under Meeting Information – Meeting Packets – *December 15, 2022 Meeting Packet*.

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### Public Comments

Public participation is an important part of the rule making process. For the Part 6 Rule Revisions, AQD did the following:

- Stakeholder workgroups were formed to draft and give input on the proposed rules.
- Comment Period: September 26 – October 26, 2022
- Public Hearing: October 26, 2022, 1:00 – 3:00 pm EDT
- Total Responses Received = 13 submittals (often containing many individual comments) from groups or individuals.
- Revisions Made Due to Comments = 20

## General Comments/Questions

1. What are the reasons for pursuing this rulemaking and the necessity for certain aspects of the rules (RACT requirement to address CTGs, approvability, etc.)?

### **AQD RESPONSE:**

All substantive rule changes are being done to address requirements of the Clean Air Act (CAA). Most of the changes are being made to address the CAA requirement to implement “Reasonably Available Control Technology” (RACT) standards. States must address all RACT standards for sources in nonattainment areas applicable to any United States Environmental Protection Agency’s (EPA) “Control Techniques Guidelines” (CTG) documents, as well as any other major sources of volatile organic compounds (VOC) or oxides of nitrogen (NOx) that do apply to any of the CTG document source categories. Ultimately, EPA will look at these rules, and, to approve a required State Implementation Plan (SIP) demonstration, they must approve these rules into Michigan’s SIP. If EPA determines the rules do not meet CTG requirements, they will not approve them into the SIP, and consequently not approve the required demonstration.

Two rules (R660 and R662) address a CAA requirement called “Reasonable Further Progress” (RFP). For us to fulfill RFP requirements, we must show a 15% reduction of VOC emissions from 2017 baseline VOC emissions. In addition to Rules 660 and 662 counting toward RFP, any expected reductions gained from the implementation of VOC RACT rules and revisions contribute toward the RFP requirement as well.

2. Southeast Michigan (SEMI) has not been reclassified to moderate nonattainment, why do the rule revisions apply to those areas?

### **AQD Response:**

The SEMI area is currently classified as marginal nonattainment but anticipated to be reclassified to moderate nonattainment in early 2023. Conversations with EPA are ongoing regarding the future status of that area. If it is reclassified as moderate, these rules must be effective by March 1, 2023, to fulfill the requirements of the CAA. Timeframes for the rulemaking process do not allow us enough time to leave SEMI out of the rules now and add them in after reclassification. We considered rule language that would take effect whenever an area was reclassified but were concerned it would be too confusing to be reliably interpreted by the impacted sources.

3. Can the implementation date for these VOC rules be extended from the current March 1, 2023, date?

### **AQD Response:**

No. A requirement of the CAA is to show that the state took steps to lead to a 15% reduction from 2017 baseline VOC emissions. Any rules implemented used to count towards the reduction must be in effect for at least one full ozone season prior to the attainment date for moderate nonattainment areas under this standard, which is August 2024. Since August occurs in the middle of an ozone season, these rules must be implemented in the prior ozone season, which begins March 1, 2023. This does not allow us to extend the implementation date.

4. Can the AQD allow for alternative VOC testing requirements to allow for equivalent test methods, or previously approved alternatives, to be used?

**AQD Response:**

Yes. Rule 602(2) was created to allow for alternatives to be used. Note this process must include SIP approval by EPA. Historically, the allowance of an alternate option, commonly referred to as “Director’s Discretion,” has been discussed with EPA and the route through Rule 602(2) is their preferred mechanism to handle options that differ from Michigan’s rule. Additional supplemental guidance is being created to help facilitate this process under Rule 602(2). Please reach out to AQD staff to get more information regarding this process if you are interested.

5. Can the 15 pound per calendar day exemption criteria, found in several of the coating rules, be changed from a daily limit to a monthly or 12-month rolling average limit?

**AQD Response:**

No. While we understand the advantages of having longer averaging times, for these rules to be approved by the EPA, the daily limit must be implemented for several of Michigan’s rules. The CAA requires creation of rules that align with the contents of CTG documents. The averaging times differ between the CTG documents, some allowing for monthly values, some daily. When allowed by the CTG and where backsliding would not occur in Michigan’s rules, monthly or annual limits were used.

6. Daily emission calculations are burdensome to manufacturing facilities – can the AQD allow methodology described in the EPA’s *Protocol for Determining the Daily Volatile Organic Compound Emission Rate for Automobile and Light-Duty Truck Primer-Surfacer and Topcoat Operations* to calculate daily emissions not only for R610a but also for other rules that require daily recordkeeping since it allows for volume of each coating used each day to be calculated by prorating the volume of that coating used in a month to each day in the month, using ratio of the total square footage coated with that coating on the day vs. in the month?

**AQD Response:**

Due to the specificity of the Auto Protocol to auto processes, it is difficult to apply it outside of this industry and processes within the rules. The Michigan rules that require daily recordkeeping point to Rule 1041(2) which allows compliant coatings to calculate the averaging period based on coating usage records during a time period of not more than 1 month.

7. If suggested changes weren’t made now, can/will they be at some future date?

**AQD Response:**

Many comments received have merit and need to be further assessed. Due to timing, there were constraints to the amount of analysis that could be done at this time. Comments were prioritized based on which ones would change the interpretation or functionality of the rules and others that help provide additional clarity were noted. An additional Part 6 rule package is planned for the future to address comments made that may provide further clarity.

8. Can exemptions for processes that either generally meet the limit in the rule or exempting processes that wouldn't be applicable to the rules be incorporated?

**AQD Response:**

We attempted to include all possible “off ramps” or “exemptions” within each rule, by limiting applicability when it was allowed by the CTG. If those exemptions or off ramps can be met, or the limits in the rule can be met, often the most substantive requirement is proof that those exemptions/limits are being met in the form of recordkeeping. Generally, we did not include exemptions when the process would not likely be considered part of the source category in the rule. Additionally, if we found that all the current processes in the nonattainment area were historically meeting the proposed limits an exemption was not included. This is because the longevity of these rules and the potential for inclusion of future nonattainment areas which may have processes not meeting the limits.

9. Since the general permit limits will no longer align with proposed rule exemptions, how does this impact industry at this time?

**AQD Response:**

The promulgation of a rule more stringent than an existing permit (general permit, in this case) is an issue the AQD is aware of and is discussing. However, a facility should comply with whichever is more stringent after the effective date, an applicable rule or a source's permit.

## DEFINITIONS (Rule 601)

1. Several comments were received about adding or rewording definitions for words and phrases, what considerations were made to incorporate those suggestions?

**AQD Response:**

Definitions are great tools and are used whenever necessary. However, we want to be careful not to overuse them as they can restrict flexibility, bulk up rules with minimal benefit, and sometimes create more confusion than they alleviate. During this rulemaking process, we received contradictory suggestions for definitions. Therefore, we attempted to add only those which were pivotal, with the intention of adding more in future rulemakings as a need for them arises. Additionally, we did not add suggested definitions for words or phrases if they are not actually used within our rules. In the absence of a definition in our rules, historically the common dictionary definitions are relied on to supplement.

## ALTERNATIVE RACT AND OTHER MAJOR SOURCES (Rule 602)

1. Were extensions to the timeframes proposed under Rule 602(4) and creation of a de minimis threshold incorporated? (Note: Rule 602(4) requires “other” major sources of VOCs, which do not have sources applicable to Rules 604 – 644, to develop their own RACT analysis demonstration.)

**AQD Response:**

Yes. Based on comments, several changes were made to timing requirements for specific actions, including:

- Extending initial facility information and potential to emit calculations from one month to three months after rule promulgation.
- Timing for submitting a RACT proposal under this rule was extended from 3 months to 6 months after rule promulgation.
- Timing of the schedule for completing implementation of the RACT proposal was revised, due to the nature of recent supply chain issues, to include an option for an alternative timeframe approved by the department.

Along with the extension to several timeframes, a de minimis threshold exemption was included for any individual units below 2.7 tons per year of actual VOC emissions up to a combined total 25 tons per year. These units would not need a RACT analysis completed; however, if emissions from these exempted units total 25 tons per year or more, then all units will need to be assessed in the RACT analysis. This de minimis serves to minimize analyses that would most likely result in non-technical or economically infeasible control options.

2. Can a facility who has been subject to a Rule 702 VOC Best Available Control Technology (BACT) analysis, PSD BACT analysis, or Nonattainment NSR VOC LAER analysis within the past ten years utilize that as an exemption under Rule 602(2)?

**AQD Response:**

No, RACT/BACT/LAER can't be used as an exemption. However, a facility could potentially borrow from those analyses to support portions of the analysis needed under R602(2) if there is relevant overlap. Ultimately, the outcome needs to be approved into the SIP, and therefore cannot be utilized as an "exemption" from R602(2) or other Part 6 rules.

3. Some National Emission Standards for Hazardous Air Pollutants (NESHAPs) are largely equivalent to these rules, can affected sources be allowed to have them recognized in their Permits to Install (PTIs) and Renewable Operating Permits (ROPs) and allowed to comply with the applicable NESHAP instead of the Part 6 rule?

**AQD Response:**

We recognize there are some portions of NESHAPs that are more stringent than what is in the rule; however, they do not align completely with the rules. Therefore, a facility can conduct a demonstration through Rule 602(2) for consideration of a particular federal standard that they are already complying with, which is as (or more) stringent than the rules, as "RACT" for their facility. This involves a complete demonstration and analysis for the facility/process and the applicable federal standard. Ultimately this demonstration needs to be approved by the EPA and put into Michigan's SIP.

## GENERAL RACT RULES (Rules 606 – 636)

1. Request to remove Rule 610(3) referring to Fletcher Paper Company of Alpena which is no longer in business.

**AQD Response:**

Due to formatting and rule references in permits (e.g., Underlying Applicable Requirements) we are keeping this language as is while we navigate state rule writing

guidelines to find a better solution. The AQD will pursue alternatives in future rule packages to remove this language.

2. Can Ultraviolet/ Electron Beam/ Light Emitting Diode (UV/EB/LED) materials be exempted from these rule requirements?

**AQD Response:**

No. While it was expressed to the AQD that most of these UV/EB/LED materials meet the limits proposed in the rules, that does not necessitate a full exemption. The use of a compliant coating cannot exempt a facility from recordkeeping or additional requirements. Additionally, we can't know if all or future UV/EB/LED materials would be below the limits established in the rules and would need a cost analysis to know if it is reasonable.

3. Some proposed rules had control equipment requirements that were, in some cases, more stringent than what's generally done through BACT, and stringent controls could potentially lead to higher emissions of other non-VOC pollutants, such as NO<sub>x</sub>, why was this then incorporated into the rules?

**AQD Response:**

In rules that contain the control equipment requirement, it is one of multiple options the facility can use to come into compliance with the rule. The other options consist of the use of entirely compliant coatings, or a combination of lower VOC coatings and lesser effective control. We acknowledge that certain control equipment can produce more emissions of other pollutants. Looking solely from an emission standpoint the preference would be to use compliant coatings. However, the flexibility and ease of finding compliant coatings may come with costs, and these rules are aimed at being "reasonable" in terms of emissions reductions and economic impact. Since the CTG allowed for these flexibilities, we wanted to include them in our rules to provide flexibility where appropriate.

4. If a facility is exempt from a rule (e.g., Rule 621a) and another rule (e.g., Rule 636) exempts the former rule (e.g., Rule 621a), would the facility be considered exempt from that rule (e.g., R636)? If so, can this be better clarified in the rules?

**AQD Response:**

Yes, the facility would be considered exempt (from Rule 636 in this example). Addition of clarifying language needs careful consideration. To aid in understandability, it is best to keep rules as succinct as possible. At this time, the rule is correct as written, but further consideration for adding clarifying language will be considered during future rulemakings.

5. Can language be added regarding the submittal of stack testing protocols for add-on control efficiency and reference to Rule 1040/1041?

**AQD Response:**

The current language, rules, and references are considered sufficient, but the AQD recognizes the suggested language was used elsewhere in other similar rules. For this reason, in future rulemakings, we will consider making them consistent. Changes at this stage of the rulemaking should be reserved for things essential to creating more transparency for the wider public.



6. Can the “once in always in” language be removed (from certain rules)?

**AQD Response:**

Based on an EPA memo and conversations with EPA Region 5 staff, it is clear the “once in always in” policy applies to all RACT rules and cannot be removed.

7. Can facility size specific recordkeeping language be used within the rule to make compliance easier for smaller facilities?

**AQD Response:**

The AQD uses outreach to assist smaller sources since additional language can become lengthy, redundant, and potentially reduce flexibility due to the inability to accurately address all scenarios.

8. Regarding Rule 624a(4) in which it refers to limits described in Rule 624(3), can additional language be included referring to exemptions in Rule 624(7)?

**AQD Response:**

Those exemptions do not apply in Rule 624a, only the limits in Rule 624(3) are to be referenced.

9. Why weren't metric units used?

**AQD Response:**

Currently, the AQD rules most commonly use standard units. The AQD will consider a new policy and, in future rulemakings, may provide both metric and standard values.

10. Why does Rule 624a contain a requirement to track VOC content of cleaning solutions?

**AQD Response:**

The AQD is at liberty to make requirements beyond those described in the CTG; this was seen as a potential VOC source, and data is needed to address applicability thresholds.

11. Can additional language be added to Rule 635 for “director’s discretion” in several areas?

**AQD Response:**

As mentioned above under “General”, Rule 602(2) describes the process for a site specific RACT demonstration. Please communicate with AQD staff to work through specifics.

12. Can retention factors and capture efficiencies be added to Rule 635?

**AQD Response:**

Retention factor language was added but capture efficiency default values were not added as they are too widely varying and site specific.

## OIL AND GAS RACT (generally Rules 640 – 644)

1. Why are marginal wells subject to the RACT rules, can they be exempted?

**AQD Response:**

The CTG for the oil and gas industry is one of the most recent EPA CTG documents, released in 2016. The CTG sets the threshold of what sources are considered small and therefore AQD relies on EPA’s considerations of appropriate “off ramps” for small sources that would not be considered “reasonable” to control. For any of the RACT rules,

if there is a unique circumstance for industry where they will not be able to meet the rule requirements, alternative RACT may be pursued through Rule 602(2). As a reminder, Rule 602(2) requires a robust RACT analysis to be conducted and will require SIP approval.

2. Why do the rules not define the three primary industry segments (e.g., upstream, midstream, downstream)?

**AQD Response:**

There are many views within the industry of how to define these phrases and they tend to conflict with one another. Additionally, our rules do not use these phrases (in reference to the industry segments), so there was no need to incorporate definitions for them at this time.

3. Should several definitions located in Rule 601 be updated or added to align with the federal standards definitions of these terms? These terms included: Local Distribution Company custody transfer station, Natural gas distribution, and Natural gas distribution and storage segment.

**AQD Response:**

After consideration, the AQD agreed these definitions would benefit from the additional clarity gained by aligning them to the related federal standard's definitions. This was done for consistency across regulations for the oil and gas industry.

4. Can additional clarity be added surrounding the type of inspection required under the Oil and Gas rules?

**AQD Response:**

Language for inspections was left broad intentionally to allow flexibility in the way industry shows compliance for inspections. We recognize there are many different types of suitable inspections which could be used to comply with the requirements outlined in the rules, many of which are already taking place due to the applicability of Subpart 0000 and 0000a regulations.

5. Could an alternative to leak testing/detection, such as AVO or soap bubble test under method 21, and the allowance of a certified in-house engineer to complete specific certifications, be used, as applicable, throughout the oil and gas rules?

**AQD Response:**

The rule originally drafted required OGI testing due to the recommendations outlined within the CTG, therefore it needed to be included for approvability of the rules. The proposed rules already allowed for repaired or replaced equipment to be resurveyed through either 40 CFR part 60, appendix A, method 21, or OGI. We understand the importance for the allowance of an in-house engineer to complete certifications, so language was added into the proposed rules, in accordance with 40 CFR 60.5393a.

6. Can incorporation of an alternative to stack testing through the use of calibrated bag testing or engineering calculations be incorporated into Rule 642 for pneumatic pumps?

**AQD Response:**

Yes, evidence provided showed that testing a pneumatic device through calibrated bag and calculations was a reasonable and cost-effective method. We revised the rule to include options for alternative performance testing as approved by the department.



7. The required rod-packing replacement based on industry information is not reasonable. Can it be removed or revised to an “either/or” statement in conjunction with the other requirements under Rule 643(5)?

**AQD Response:**

Yes, evidence was provided showing rod packing is inspected regularly during every inspection, oil change, and service so there is ample monitoring occurring. We revised the requirement to allow for either rod packing replacement every 36 months or routing rod packing emissions to a process.

## CONSUMER PRODUCTS & AIM (Rules 660 – 662)

1. Due to timing constraints within the supply chain, compliance with Rule 660 by January 1, 2023, is difficult, can the implementation date be extended to one year after the date of publication of the final rules?

**AQD Response:**

No. A requirement of the CAA is to show the state took steps to lead to a 15% reduction from 2017 baseline VOC emissions. Any rules implemented that are used to count towards that reduction would have to be in effect for at least one full ozone season prior to the attainment date for moderate nonattainment areas under this standard, which is August 2024. Since August occurs in the middle of an ozone season those rules must be implemented the prior ozone season, which starts March 1, 2023. This does not allow us to extend the implementation date one year after the date of publication of the final rules.

2. Can the exemption under Rule 660 for products containing 98% para-dichlorobenzene (PDCB) exempt “Solid Air Fresheners,” which use (PDCB)?

**AQD Response:**

As this is not directly related to VOC emissions, AQD’s Toxics Unit was consulted and after much consideration from both the commentor and the AQD Toxics Unit, we revised the rule to allow an exemption for solid and semi-solid air fresheners with at least 98% PDCB not intended for use inside residences or commercial establishments.

3. Due to timing constraints within the supply chain, compliance with Rule 662 (AIM rule) by January 1, 2023, is difficult, can the implementation date be extended to one year after the date of publication of the final rules?

**AQD Response:**

As described above, a delayed implementation would hinder our ability to meet CAA requirements. However, the commentor supplied information to establish that the proposed rule, as written, would be disproportionate in its harm to small facilities. Therefore, the rule was revised to provide smaller manufacturers additional time as it would not significantly affect the state’s ability to meet the Reasonable Further Progress requirements in the Clean Air Act.

## ADDITIONAL SOURCES OF INFORMATION

1. [Administrative Rulemaking System – Part 6 rule package documents \(2022-18EQ\)](#)
2. [EPA Control Techniques Guidelines \(CTG\) Documents](#)
3. [EGLE AQD SIP Laws and Rules Webpage](#)
4. [EGLE AQD SIP Ozone Nonattainment Webpage](#)

NOTE: The information in this document is intended to supplement the Part 6. Emission Limitations and Prohibitions - Existing Sources of Volatile Organic Compound Emissions of the Michigan Air Pollution Control Rules. The laws governing this responsibility are sections 5503 and 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act 1994, PA 451 as amended. These comments do not replace or supersede any portion of the Act and Rules.

Download a copy of the Part 6. Emissions Limitations and Prohibitions – Existing Sources of Volatile Organic Compound Emissions, please visit AQD’s [Laws and Rules website](#).

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