

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Environment, Great Lakes and Energy

Bureau name:

Air Quality Division

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Rule Set Information:

ARD assigned rule set number:

2023-15 EQ

Title of proposed rule set:

Part 10. Intermittent Testing and Sampling

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

The proposed rules pertain to intermittent testing and sampling to support the Michigan Air Pollution Control Rules (MAPCR). This rule package generally contains three types of revisions:

- R 336.2001, R 336.2003, and R 336.2004 generally contain updates to performance testing language;
- R 336.2041 contains changes to fulfill requirements of the federal Clean Air Act (CAA) 42 U.S.C. 7401 et seq., specifically Section 182(b)(2), referred to as “Reasonably Available Control Technologies” (RACT); and
- The remaining rule revisions are administrative changes to align formatting and phrasing with the current recommendations put forth in the “Administrative Rules in Michigan A Manual of Style” guidance document, published by the Michigan Office of Administrative Hearings and Rules (MOAHR).

The proposed rules incorporate several United States Environmental Protection Agency (USEPA) federal reference test methods, where applicable. The rules do not parallel any other state standards, national licensing agency, or accreditation associations.

A. Are these rules required by state law or federal mandate?

The proposed rule revisions under R 336.2041 are required to fulfill the federal CAA RACT requirements, 42 USC 7401 et seq., specifically Section 182(b)(2), and all other revisions serve to support the MAPCRs and Michigan’s Air Quality Programs.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules align with other testing and sampling requirements found in similarly situated states in Region 5, which includes: Michigan, Wisconsin, Illinois, Indiana, Minnesota, and Ohio. Additionally, Ohio, Illinois, Indiana, and Wisconsin have similar rule requirements to the proposed rule revisions in R 336.2041 to fulfill the CAA RACT requirements, 42 USC 7401 et seq., for ozone nonattainment areas.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed standards in Region 5 states where conditions require RACT provisions, as they do in Michigan.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no known laws, rules, or other legal requirements in the State of Michigan that duplicate, overlap, or conflict with these proposed rules. One aspect of the proposed rule changes is to remove duplicative adoption by reference language that has been incorporated into the Part 9 rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The proposed rules have been coordinated to reference, where applicable, federal reference test requirements to ensure alignment and consistency between state and federal regulations when possible.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

Rules R 336.2001, R 336.2003, and R 336.2004 establish intermittent testing and sampling requirements for various portions of the MAPCRs. The changes to the proposed rules are designed to increase the frequency and success of compliance with performance tests by aligning our regulations with current testing and sampling procedures and updating reference material information. The changes are expected to alter the current behaviors or practices of those subject to the rule so they conform to the new testing and sampling requirements.

The purpose of the proposed rule changes under R 336.2041 is to update references, for compliance requirements, to recently established rules within Part 6 of the MAPCR and to update the reference for required USEPA publications to the newer version that is currently used by industry. The proposed rule changes to R 336.2041 are specific to coating processes and will increase the frequency and success of compliance with federal requirements by updating references to the MAPCR and USEPA publications. The changes are expected to alter the current behaviors or practices of those subject to the rule so they conform to the new RACT limits to fulfill the CAA requirements.

The purpose of the proposed administrative rule revisions is to update formatting and phrasing to align with current Rulemaking Style Guide requirements established by MOAHR. The proposed rules are designed to increase clarity and understandability of the rules. The changes are expected to increase the understanding for those subject to or interpreting the rules.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The regulated community should use the updated procedures and reference materials in the proposed rules every time they are performing an action that is required by corresponding parts of the MAPCR with references to these updated procedures and reference materials. The proposed rule changes update the test methods that are acceptable to utilize; however, the frequency of when the testing is required is set by the MAPCR and has not changed.

B. Describe the difference between current behavior/practice and desired behavior/practice.

For R 336.2001, R 336.2003, and R 336.2004 the rules do not provide adequate clarity surrounding the procedures and timing of performance testing, making them difficult to understand. The proposed rules will provide a higher level of detail for the performance test procedure and update reference material information, leading to better understandability and a desired behavior of improved compliance with the rules.

R 336.2041 currently does not align with the most recent versions of the USEPA federal test methods. The proposed rules will align the requirements with updated federal test methods leading to better understandability and compliance.

All other proposed rule changes are to revise language in current rules so they align with the requirements established under MOAHR's Rulemaking Style Guide. The desired behavior is to have the rules align with the MOAHR Rulemaking Style Guide.

C. What is the desired outcome?

The desired outcome of the proposed rule revisions for Part 10 is to provide additional clarity to assist in timing and compliance of performance tests, align state compliance methods with federal standards, and ensure consistency with the MOAHR Rulemaking Style Guide.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

In the absence of updating rule R 336.2041, Michigan would be out of compliance with the requirements of the CAA. Additionally, without the other proposed rule updates there would not be updated references and clarifying language to support the testing and sampling air program. This would result in confusion from referencing improper reference materials resulting in potential confusion in the interpretation of timing of the testing requirements of these rules.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The rationale for changing the rules instead of leaving them as currently written is to ensure clarity of timing needs for performance tests, provide updates to guidance materials used that satisfy the requirements of the CAA, and remove duplicative adoption by reference language that has been incorporated into the Part 9 rules.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules protect health, safety, and welfare of Michigan citizens by providing context and requirements regarding testing and sampling to assure continued compliance with the MAPCRs. The proposed rules provide clarity surrounding the requirements and align with federal requirements to the extent possible. By increasing understandability of the requirements and ensuring unity between federal and state requirements, where possible, the proposed rule changes are expected to promote a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no obsolete or unnecessary rules in the affected rule set that can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The proposed rule changes are not expected to result in any additional costs or potential savings by the agency and should have little fiscal impact on the department.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No additional appropriation is expected nor needed for these proposed rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules would not place any additional burden on individual staff at the agency.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

There are no burdens identified for individual staff at the agency.

Impact on Other State or Local Governmental Units

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rule changes would not affect revenues, nor are they anticipated to increase or decrease the costs for other state or local governmental units.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There are not any programs, services, duties, or responsibilities placed upon any city, county, town, village, or school district as a result of the proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not require any actions that governmental units must take to comply with these rules.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No additional expenditures are anticipated with the proposed rules, so no appropriation to state or local governmental units has been made, nor has a funding source provided for any additional expenditures associated with the proposed rules.

Rural Impact

14. In general, what impact will the rules have on rural areas?

The proposed rules will not have any impact on rural areas that are different than non-rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

No public or private interests in rural areas will be affected differently than non-rural areas.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

While the proposed rules may not have a direct impact on the environment, by leading to an increased understanding of rule requirements, the proposed rules should lead to improved compliance with air quality rules, which should, in turn, have a positive impact on the environment.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

R 336.2001 regarding performance testing requirements sets several applicability thresholds to set boundaries on this requirement; however, it does not directly exempt small businesses, since they have potential to still emit significant amounts of air emissions. The size of a business (small versus large) is not a factor as much as the quantity of their emissions, which may, but does not always, correlate.

The proposed rule revisions for R 336.2003, R 336.2004, and R 336.2041 do not directly regulate businesses. Rather, other Parts of the MAPCRs set applicability standards and the proposed rules outline compliance methods those businesses would be required to follow. Therefore, incorporation of an exemption for small businesses in these proposed rules was not applicable.

The rest of the proposed rule revisions were only made to update formatting to align with current Michigan requirements, and therefore, considerations to exempt small businesses were not made.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not exempt small businesses because small businesses are still capable of emitting large amounts of air pollution. Additionally, a majority of these rules, as previously stated, do not set applicability standards. Rather, they establish procedures for showing compliance with other rules in the MAPCR.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

It was not possible to deduce an exact number of small businesses impacted based on available data; however, each year approximately 2,000 facilities report emissions to the agency and about 339 are defined as a major source, meaning the facility is capable of emitting more than certain amounts of air contaminants. This is not to say that there are 1,500+ small businesses impacted, since small businesses have a potential to have large emissions and large businesses have the potential to emit small emissions. Only small businesses that are required to complete stack testing or show compliance with coating, graphic arts, or printing rules would be impacted by the proposed rules.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not establish differing compliance or reporting requirements or timetables for small businesses. The proposed rules do not add additional compliance requirements, and in the one instance that reporting requirements were changed, the timing implications are expected to be minimal and align with the current practices. This revision is not expected to increase administrative costs to any businesses. Therefore, variances for small businesses were not necessary.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rules do not have any differences in reporting requirements based on the size of the business.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not establish performance standards based on the size of the business, but instead look to volume of emissions.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

There is no known disproportionate impact on small businesses due to the proposed rules.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

All businesses, regardless of size, are required to comply with the proposed rules. The proposed rules do not require any additional report preparation beyond what is required under current rules. The nature of reports required under the rules generally supports information that would be used to show compliance with applicable emission limits or performance testing requirements. The cost of preparation for these types of reports varies based on staff knowledge and abilities, but in some cases, applicable businesses may need to hire a consultant.

In addition, any business required to complete a performance test must hire a third-party company to conduct the test. According to a report by the USEPA, the cost of a performance test can typically range from \$10,000 to \$50,000 per stack. The price of a test depends on the type of tests and complexity needed.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules do not require any additional compliance costs than what is required under the current rules for any businesses, including small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rules do not impose a cost of any legal, consulting, or accounting services on small businesses aside from the cost to hire a third party to conduct any needed performance testing. The costs of the performance tests are based on the complexity and needs of the specific test and not the size of the business. The proposed rules do not increase the current cost imposed on a small business.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

EGLE does not expect that small businesses would suffer economic harm or competition in the marketplace as a result of the proposed rules.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The agency costs for administering and enforcing the air quality rules are part of the annual operating budget and do not identify a portion attributed to small businesses. These costs would not change if small businesses were exempt or followed different standards of compliance because the agency would still review the industry.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

If small businesses were exempt or held to lesser standards simply by virtue of the size of their business instead of the volume of emissions, there could be negative impacts to the environment and to public health.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

EGLE established a workgroup with stakeholders from all across industry as well as consultants who represent small businesses.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Small businesses were involved in the development of the proposed rules mainly through consultants and association representatives looking out for small business interests.

Cost-Benefit Analysis of Rules (independent of statutory impact)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The proposed rules, R 336.2001, R 336.2003, and R 336.2004, set compliance methods for industries statewide for various processes using various test methods and performance tests. EGLE observes approximately 300 performance tests a year within the Air Quality Division (AQD); however, this total varies year to year due to resource availability, and in the more recent past has varied to accommodate the impacts of the COVID pandemic. The costs on businesses can vary from no cost to \$50,000 or more depending on complexity of the performance tests required or expertise at the business; however, these proposed rule amendments do not add any additional costs to businesses other than what was previously required.

The proposed rule, R 336.2041, which updates references for compliance requirements to recently established rules within Part 6 of the MAPCR and updates the reference to required USEPA publications, is not estimated to impose any additional compliance costs on businesses or groups. The amendments are meant to clarify and support procedures of businesses for documenting compliance.

The remaining proposed rule amendments are administrative and only update phrasing and format, therefore they do not alter the current cost of compliance.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The proposed rules pertain to all businesses subject to rules or permits that reference Part 10 intermittent testing and sampling requirements. Some examples would be businesses requiring: performance tests; test methods for in-stack filtration, out-stack filtration, particulate matter emissions from positive pressure fabric filters, coke oven quench towers; determinations of volatile organic compound emissions from coating lines and graphic arts lines; or recordkeeping for coating lines and graphic arts lines.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There are not expected to be increased costs from the proposed rules beyond what was previously required.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The proposed rules are related to testing and sampling methods for regulated industry and do not create any additional compliance costs for individual members of the public.

A. How many and what category of individuals will be affected by the rules?

The proposed rules will not affect a specific category of individuals.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

There are no qualitative or quantitative impacts on any category of individuals.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

The proposed rules may result in potential cost reductions for businesses from implementing clearer language within regulations. This is a variable reduction ranging from no savings to somewhere in the realm of under \$1,000. For groups and individuals, the proposed rule changes are not likely to reduce costs.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary benefit of the proposed rules is to provide accurate compliance, testing, and sampling methods, as required throughout the MAPCRs, by assuring references and procedures are updated as appropriate. The secondary or indirect benefit of the proposed rules is the increased level of clarity to help support interpretation and compliance with the MAPCRs leading to improved air quality. EGLE has estimated that the proposed rules provide primary and secondary benefits to approximately 50% or more of the processes regulated by the AQD.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules are expected to have negligible effect on business growth and job creation in Michigan.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The proposed rules are generally applicable to sources statewide. Proposed rules, R 336.2001, R 336.2003, R 336.2004, R 336.2011, R 336.2012, and R 336.2014, pertain to performance tests and impact a wide range of industry sectors as the tests are made to any applicable facility that requires performance tests on their control equipment, which generally are stacks and filters for particulate matter and other pollutants.

R 336.2040 and R 336.2041 generally impact compliance and recordkeeping requirements for coating, graphic arts, or printing processes at businesses statewide.

The remaining rule, R 336.2033, regulates coke oven quench towers.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The agency reviewed and relied on updated USEPA federal standard material to update references in the proposed rules as well as USEPA publications for the cost determinations utilized to compile the regulatory impact statement. Additionally, EGLE relied on overall number of facilities reporting emissions to the agency to assess the potentially impacted businesses and relied on staff knowledge to determine approximately how many businesses require performance tests annually.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

For the proposed rules related to performance tests, R 336.2001, R 336.2003, R 336.2004, R 336.2011, R 336.2012, and R 336.2014, to estimate the amount of performance tests AQD staff observe annually, we relied on the approximation that since observing performance tests is approximately 30% of the staff's position description, that would equal about one per week on average and we have six staff that carry out that task. One observed performance test a week is 52 per year, multiplied by the six staff persons, equals 312 observed performance tests per year. We rounded to 300 with the caveat that there may be other factors preventing or limiting that overall number. Additionally, staff relied on cost estimates from USEPA publications regarding performance testing to determine the cost range.

For R 336.2040 and R 336.2041, the agency also used general information regarding the AQD emissions reporting system to estimate the number of facilities potentially impacted by determining the overall number of facilities that report emissions and estimated based on staff knowledge of how many may be coating, graphic arts, or printing processes.

Assumptions made were that the administrative changes updating USEPA federal standard references and adding clarifying language to the proposed rules would help businesses understand the rules better and lead to increased compliance of the rules.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

EGLÉ evaluated the scope of the proposed revisions and alternatives to said revisions. Alternatives for revisions regarding timing made in R 336.2001 and R 336.2003 were discussed; however, the proposed timeframes were agreed upon by staff to achieve the best compliance procedures for performance tests.

R 336.2004 proposed revisions added several more federal reference test methods to be considered when executing a performance test. Alternatives to federal reference test methods would not achieve the same level of consistency in compliance with the agency's rules or industries that may need to comply with similar methods in other states nationally.

R 336.2041 proposed revisions did not have any reasonable alternatives since the revision updated an already utilized federal recordkeeping guidance protocol for automobiles.

The remaining revisions are aimed at improving the overall clarity of the rules and reducing burdens to the regulated community; not pursuing the revisions would result in the lack of clarity that often leads to confusion, inconsistent interpretations, noncompliance with the CAA for the state, or unnecessary burdens.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments are necessary.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

These proposed rules establish procedures and materials used by industry to show compliance with EGLÉ's air quality regulations. A private market-based mechanism would not provide EGLÉ with authority to confirm proper compliance with the MAPCR, nor would it allow EGLÉ to show compliance with the CAA requirements. No other private market-based systems are known to be utilized by other states.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Alternative language for R 336.2001 and R 336.2003, regarding performance test reporting requirements was discussed and considered internally to determine the best way to provide more clarity surrounding timing requirements of a performance test. There were no suggestions contributed by the workgroup, but if there had been, such suggestions would have been considered and incorporated, as appropriate.

The remaining revisions are to improve the overall clarity of the rules by updating references and formatting, therefore significant alternatives were not considered or incorporated. All revisions were sent to the workgroup for review and no comments were made or alternatives suggested.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

MCL 24.245b(1)(c) is not applicable to the proposed rules.