

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:

2021-24 EQ

Title of proposed rule set:

Part 8. Emission Limitations and Prohibitions – Oxides of Nitrogen

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.

Changes to R 336.1802, R 336.1803, and R 336.1810 are necessary to satisfy requirements of a United States Environmental Protection Agency (USEPA) regulation often referred to as the Nitrogen Oxides (NOx) State Implementation Plan (SIP) Call or “NOx SIP Call.” These changes allow the state to have more control over how it will meet the state budget for NOx emissions during the annual ozone season. This includes how some aspects of monitoring, testing, and recordkeeping are implemented. While there are no specific federal NOx SIP Call rules to parallel, they are a direct result of that federal regulatory requirement. The remaining proposed rule changes in the package do not parallel any rules or standards. The remaining changes are clarifications/definitions, simplifications, or removal of obsolete rules.

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

R 336.1802, R 336.1803, and R 336.1810 fulfill a federal mandate, the NOx SIP Call. The remaining proposed rule changes are not mandated.

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 rule changes are either simple clarifications, definitions, removal of obsolete rules, or are meant to fulfill a federal standard, but they are not meant to exceed that standard.

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

Proposed changes to R 336.1802, R 336.1803, and R 336.1810 will bring Michigan into alignment with several other states by transferring more oversight over NOx SIP Call related regulations from the USEPA to their respective states. The remaining proposed rule changes rescind rules likely already removed from other states' regulations or are not comparable because they are simple clarifications and definitions.

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 rule changes are not likely to exceed standards in any other states.

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

The proposed rule changes do not duplicate, overlap, or conflict with any federal, state, or local laws.

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 rule changes have been coordinated with other state laws. In the case of these changes, coordination consisted of appropriate placement within our existing rules to enable proper implementation and interpretation by Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) staff and the regulated community. R 336.1802, R 336.1803, and R 336.1810 require coordination with the USEPA to ensure they fulfill requirements of the NOx SIP Call, and collaboration has taken place between USEPA and EGLE staff. No coordination was necessary or possible with local laws.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

The proposed rule changes are not more stringent than any federal standard.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

The proposed rule changes are not more stringent than any federal standard.

Purpose and Objectives of the Rule(s)

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

R 336.1802, R 336.1803, and R 336.1810 are being modified to allow the AQD to approve alternative monitoring/reporting/recordkeeping and administer requirements of the federally required NOx SIP Call. This monitoring is performed during the summer ozone season and reporting is required at various times of the year.

The remaining proposed rule changes are only meant to simplify rules or clarify understanding or are removing obsolete rules.

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

Testing, monitoring, and recordkeeping may be slightly reduced overall. Reporting requirements may go from quarterly to annually depending on which monitoring option the regulated facility chooses.

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

Currently, sources subject to R 336.1802, R 336.1803, and R 336.1810 are required to report to and work with the USEPA on NOx SIP Call requirements and are regulated by 40 Code of Federal Regulations (CFR) 75 monitoring requirements. If the proposed rule changes are promulgated and approved by the USEPA into Michigan's SIP, sources will have the ability to request approval of alternative monitoring requirements as regulated by 40 CFR 60. They would also no longer be required to obtain a separate permit, which had to be renewed every five years, as was previously required.

C. What is the desired outcome?

Facilities subject to R 336.1802, R 336.1803, and R 336.1810 will have the ability to request the AQD approve alternative monitoring requirements that are protective of the environment, but less onerous and less expensive. Facilities subject to other proposed rule changes will find the rules to be easier to understand. The proposed removal of obsolete rules will make our rules less confusing to everyone.

7. 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.

Sources affected by the proposed changes to R 336.1802, R 336.1803, and R 336.1810 are currently incurring additional costs to maintain the equipment and procedures necessary to meet the USEPA's monitoring requirements. As they seek to repair and replace monitoring equipment for these more stringent requirements, they are paying a considerable additional cost. These costs are certain to continue.

In the case of other proposed rule improvements, the only harm is a lack of understandability. Sources currently subject to these rules will incur no harm, but as new sources become subject to them, there is the potential for confusion.

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

Making the proposed changes to the rules will potentially save money for some facilities subject to the NOx SIP Call, as well as make compliance easier to demonstrate and verify for the facilities and the AQD. These flexibilities will still allow the AQD to ensure there are sufficient efforts made to protect the environment and human health.

8. 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 R 336.1802, R 336.1803, and R 336.1810 changes allow AQD staff to evaluate all aspects of the activities previously reviewed by USEPA staff. The protection of health, safety, and welfare of Michigan's citizens should remain unchanged, while giving the regulated community more flexibility. The remaining proposed rule changes will have no adverse effect on health, safety, or welfare of Michigan's citizens and may make Michigan's regulations more understandable and therefore easier to implement and verify compliance.

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

R 336.1802a, R 336.1804 to R 336.1809, R 336.1811 to R 336.1817, R 336.1821 to R 336.1826, and R 336.1830 to R 336.1834 are all rules created as part of earlier cap and trade programs that were remanded by the U.S. court system. Those cap-and-trade programs have been replaced and the new version, the Cross State Air Pollution Rule, which is a federally run program, is not contained within Michigan's rules. This makes all the rules listed obsolete; this rule package proposes to rescind them.

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.

10. 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 likely to have any fiscal impact on the agency. AQD staff will need to respond to requests for alternative monitoring plans and track some emission budgets, but this work can be done as part of normal duties and compliance evaluations.

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

There are no expenditures associated with the proposed rule changes, therefore no appropriations or funding is necessary.

12. 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 regulated community could potentially experience significant financial benefit if they choose to utilize flexibility being added with the proposed changes in R 336.1802, R 336.1803, and R 336.1810. Without these proposed changes, sources subject to the current rules are required to monitor and report according to current federal rules. Additional burdens these changes may cause are to AQD staff and are minimal if not immeasurable. State residents will experience no change in environmental protection.

All other proposed rule changes are only necessary to accomplish the goal of understandability. For these, no burdens will be experienced by any group.

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

These proposed rule changes will give the regulated community more options for how they monitor their emissions. This, as well as a potential for less reporting, create a financial benefit for the regulated entity that far outweighs the small burden of additional work for AQD staff. Usually, this work will be one-time evaluations and simple annual data reviews and is similar to work commonly done by AQD staff. In addition, the regulated community will be able to work with AQD staff for quicker response times on issues as opposed to having to work through federal USEPA staff.

All other proposed rule changes will not result in a burden to any group.

Impact on Other State or Local Governmental Units

13. 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 will not affect revenues of other states or local governmental units.

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

No additional responsibilities will be imposed on cities, towns, villages, or school districts by these proposed rule changes.

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.

No governmental units will need to take any actions due to these proposed rule changes.

15. 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.

The proposed rule changes have no direct costs associated with them, so no appropriations have been made nor any funding sources provided.

Rural Impact

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

The proposed rule changes will have no impact specific to 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 specific to rural areas will be affected by these proposed rule changes.

Environmental Impact

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

No, the proposed rule changes will have no adverse impact on the environment.

Small Business Impact Statement

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

These proposed rule changes can benefit all business, regardless of size. However, very few small businesses are likely to be affected by the current rules or the proposed rule changes.

19. 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 rule changes should make rule applicability easier to understand and easier to comply with for all businesses. There is no need to assess the impact on small business as it is unlikely to be economically negative.

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

No small businesses are expected to be affected by these rule changes.

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.

Since no small businesses are expected to be affected, and in general, the changes are expected to be positive for the regulated community; no special compliance, reporting, or timetables were needed.

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.

Because no small businesses are expected to be affected, and in general, the changes are expected to be positive for the regulated community, the agency did not consolidate or simplify the rules specifically for small businesses, although some clarification and simplification was done, for all businesses' benefit.

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

There are no performance, design, or operation standards affected by these proposed rule changes.

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

Because no small businesses are expected to be affected, and in general, the proposed rule changes are expected to be positive for the regulated community, no disproportionate impact is expected.

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

Small businesses are not anticipated to be affected by the proposed rule changes and therefore are not expected to have reporting requirements.

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

There are no expected costs to small businesses for equipment, supplies, labor administration, etc., for these proposed rule changes.

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

There are no expected costs from the proposed rule changes for small businesses for legal, consulting, or accounting services.

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

There are no expected costs from the proposed rule changes for small businesses, therefore there are no costs to absorb.

25. 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.

All the rules in Part 8 are aimed at large sources of NOx. To be impacted, these businesses need to have an expensive piece of equipment used in conjunction with other costly pieces of equipment. These rules and the proposed rule changes are not likely to impact small businesses.

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

Small businesses are not expected to be affected by these rules; therefore, the public interest is not a factor in this regard.

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

No small businesses were involved in the development process. All known impacted sources were contacted about the proposed changes in these rules, and none can be described as small businesses.

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

Small businesses were not involved in the proposed rule change development.

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

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

No new compliance costs for businesses or groups are anticipated because of the proposed rule changes.

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

Seven sources known as non-Electrical Generating Units (non-EGUs) are most impacted by the proposed rule revisions. These seven sources have been part of a workgroup charged with drafting the proposed rule modifications for R 336.1802, R 336.1803, and R 336.1810. In addition, a handful of sources affected by several minor proposed rule clarifications were also contacted and given an opportunity to comment. The remaining proposed rule changes are for obsolete rules and therefore have no stakeholders.

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.

The seven non-EGU sources subject to R 336.1802, R 336.1803, and R 336.1810 will incur no additional costs as a result of the proposed rule changes. Recordkeeping and reporting requirements are minimal, and with the proposed edits, will simply shift from one regulatory agency to another (from the USEPA to EGLE). These sources will be positively impacted if they choose to use flexibility the proposed rule changes will allow. The remaining facilities impacted by other proposed rule changes will not incur additional costs either.

29. 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 rule changes will have no impact on compliance costs for any individual.

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

No individuals are expected to be affected by these proposed rule changes.

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

There are no impacts anticipated on individuals from these proposed rule changes.

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

Proposed changes to R 336.1802, R 336.1803, and R 336.1810 will allow more alternatives for monitoring than are currently allowed and are expected to reduce some testing and monitoring requirements for the affected businesses. It will also potentially allow for less expensive monitoring equipment to be purchased when replacement is necessary.

The remaining proposed rule changes will not result in cost reductions to businesses.

31. 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 benefits to the proposed rule changes will be experienced by the regulated community with increased flexibility and lower emissions monitoring costs for those subject to R 336.1802, R 336.1803, and R 336.1810. These costs can start in the tens of thousands of dollars, and be as much as several hundred thousand dollars, based on information given by the affected businesses. The benefit to businesses subject to the other proposed rule changes is increased understandability.

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

The proposed rule changes are not expected to have an impact on business growth or job creation in Michigan or elsewhere.

33. 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.

Proposed changes to R 336.1802, R 336.1803, and R 336.1810 will affect seven facilities in the state of Michigan, commonly referred to as non-EGUs. They are potentially affected positively. The remaining rule changes are applicable to several Michigan facilities, but will have no effect.

34. 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.

Due to the nature of the proposed rule changes, there will be minimal to no adverse economic, environmental, or other impacts from these proposed rule changes. Therefore, other than conversations with the affected facilities, there were not any external sources or methodologies relied upon for the preparation of the regulatory impact statement.

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.

Estimates of financial benefit for non-EGUs were made through conversations with impacted facilities and their representatives. No other estimates were necessary for other proposed rule changes.

Alternative to Regulation

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

The proposed changes to R 336.1802, R 336.1803, and R 336.1810 allow non-EGUs more flexibility for monitoring and testing requirements than are currently required. There are no other reasonable alternatives to accomplish this outcome.

The remaining proposed rule changes could be left as they are, except the obsolete rules need to be rescinded as they address deadlines that have passed, and they reflect requirements of a federal rule which has been replaced by a new more stringent federal regulation.

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

Because there are no alternatives that can achieve the same goal as the proposed rule changes, no statutory amendments apply.

36. 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.

Although possible to establish a regulatory program through private market-based mechanisms, it is not practical or necessary and would require the use of resources of both the state and the regulated community far beyond those needed to implement these rules. The NOx SIP Call program has reached a stage in which the supply of allocations for NOx emissions far outweighs demand in Michigan and will for the foreseeable future. The AQD can implement and maintain this program with minimal/existing resources. AQD knows of no other states utilizing a private market-based system to implement the NOx SIP Call, and many have made or are making changes similar to those proposed here.

37. 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.

The only alternatives considered were slightly different variations of the same proposed rules. Because these rules must sufficiently replace federal rules, very little variation will adequately fulfill federal requirements.

Additional Information

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

No additional instructions are needed to comply with the proposed rule changes.