

**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

**Name of person filling out RIS:**

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**Rule Set Information:**

**ARD assigned rule set number:**

2022-18 EQ

**Title of proposed rule set:**

Part 6. Emission Limitations and Prohibitions – Existing Sources of VOC Emissions

**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 336.1601 – R 336.1662 are necessary to satisfy requirements of the federal Clean Air Act (CAA) 42 USC 7401 et seq., requirements referred to as “Reasonably Available Control Technologies” (RACT).

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

Yes, the rule changes are necessary to address requirements by limiting volatile organic compound (VOC) emissions and addressing the requirements of the federal CAA under Section 182(b) for the 2015 ozone national ambient air quality standard (NAAQS) nonattainment areas.

**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 are not meant to exceed the federal standard, aside from R 336.1618, R 336.1660, and R 336.1662.

R 336.1618 currently prohibits the statewide use, manufacture, mixing, storing, or applying of specialty asphalts from April 1 to September 31. The proposed rule changes will revise this rule to add the months of March and October to align with the updated ozone season established under 40 CFR Part 58 Appendix D by the United States Environmental Protection Agency (USEPA). This revision is required for the nonattainment areas at a minimum; however, the proposed rule applicability remains statewide to be consistent with the existing rule. There are no expected additional costs to the industry and there are potential expected benefits from this proposed rule change to decrease VOC emissions.

Federal requirements call for VOC emissions reductions in the moderate ozone nonattainment areas, called reasonable further progress (RFP) established under 40 CFR Part 51 Subpart CC, which sets a required level of VOC emission reductions in a nonattainment area. The state can choose what controls will be implemented to achieve the required level of reductions.

To achieve the mandated reductions, R 336.1660 and R 336.1662, address Consumer Product and AIM coating rules, respectively. These rules adopt by reference the Ozone Transport Commission's (OTC) model rules, which are more stringent than that of the federal regulation counterparts established under 40 CFR Part 59 Subparts C and D. These proposed revisions are consistent with rules that have already been adopted by other states in the region and are necessary to meet the federal requirements for emissions reductions.

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

These proposed rules do not exceed standards in similarly situated states as they are intended to meet the requirements of the federal CAA. Proposed changes to R 336.1660 – R 336.1662 will bring Michigan into alignment with several other states by adopting by reference more recent phases of the consumer products and architectural industrial maintenance (AIM) coating rules.

**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 similarly situated states.

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

No laws, rules, and other legal requirements duplicate, overlap, or conflict with the proposed 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 are required to comply with federal law and the language of the rules has been coordinated with USEPA guidance and documentation to develop the proposed rule changes. The proposed rules have been revised by adjusting applicability and existing dates to avoid and minimize duplication. Due to the complexity of R 336.1610, R 336.1620, R 336.1621, and R 336.1624, new rules were drafted (R 336.1610a, R 336.1620a, R 336.1621a, and R 336.1624a) to avoid confusion for these coating sources based on variances in geographic applicability and existing dates.

**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 except for R 336.1618, R 336.1660, and R 336.1662.

The R 336.1618 proposed revision only extends the applicability date for the existing rule, from April 1 through September 31 to March 1 through October 31. The federal standard requires this update to be made at a minimum to the nonattainment areas. The current rule applies statewide for industry consistency; the proposed revision will be a statewide revision as well. There is no disadvantage to industry economically if the proposed rule continues to apply statewide, and it provides consistency and clarity.

R 336.1660 and R 336.1662, addressing Consumer Product and AIM coating rules, respectively, adopt by reference the Ozone Transport Commission's (OTC) model rules, which are more stringent than that of the federal regulation counterparts. These proposed revisions are consistent with rules that have already been adopted by other states in the region and are necessary to meet federal requirements for VOC emissions reductions in the ozone nonattainment areas. The federal requirement is called reasonable further progress (RFP), which sets a required level of VOC emission reductions in a nonattainment area. The state can choose what controls will be implemented to achieve the required level of reductions. Revisions to these two rules are needed to meet the federal requirements for emissions reductions.

**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.**

MCL 24.232(9) does not apply since the proposed rules are mandated by the federal government.

## **Purpose and Objectives of the Rule(s)**

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

The proposed rules are being modified to reduce VOC emissions to assist the nonattainment areas reach the 2015 ozone NAAQS and meet the federal CAA requirements, 42 USC 7401 et seq., which require development of RACT rules and demonstrate reasonable further progress.

Some of the proposed rule changes are only meant to simplify rules, clarify understanding, or remove obsolete rules.

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

The proposed rule changes are expected to decrease VOC emissions across various source categories resulting in lower ozone levels in the nonattainment areas.

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

Current RACT sources have higher emission limits than what are proposed in these rule changes. Emission limits will be tightened or added in the proposed rules to align with the USEPA Control Techniques Guidelines (CTGs) for what is considered RACT level emissions for affected sources.

R 336.1660 currently regulates VOCs from consumer products under the OTC Model Rule phase II, whereas the proposed rule revisions will implement the phase IV Model Rule to increase VOC reductions and align with the level of stringency found in other states, assisting Michigan in meeting the RFP requirement.

R 336.1662 is a new proposed rule for AIM coating. Michigan does not currently regulate these sources, so implementation of the proposed rule will reduce VOC emissions and align with the level of stringency found in other states, assisting Michigan in meeting the RFP requirement.

**C. What is the desired outcome?**

The main purpose of these rule revisions is to meet CAA requirements and reduce VOC emissions. Facilities subject to these rules will follow more stringent emission limits consistent with the USEPA's CTG recommendations for what is considered reasonably available controls. When promulgated, these rules will be submitted to the USEPA as required by the CAA as part of Michigan's state implementation plan addressing ozone nonattainment areas in the state.

**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.**

Ozone is formed in the lower atmosphere through chemical reactions involving VOC emissions and other pollutants. Several areas in Michigan have not met the Ozone NAAQS and are currently classified as marginal nonattainment. The USEPA is currently proceeding to reclassify these areas to moderate nonattainment, a process that is expected to be completed by late summer 2022. Moderate requirements include RACT controls and controls on VOC sources to meet RFP. The control requirements are in the CAA, and Michigan's failure to implement these control programs for moderate ozone nonattainment areas will result in the USEPA eventually imposing offset and highway sanctions lasting until the control requirements have been adopted by Michigan. From a human health standpoint, it is important for Michigan to bring all ozone nonattainment areas back into attainment, so all Michigan citizens have clean air to breathe. At elevated concentrations, ozone can cause respiratory distress, even in healthy adults, but those with lung disease (such as asthma) and children are particularly susceptible.

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

By changing the rules, the Air Quality Division (AQD) will be able to meet the requirements for moderate nonattainment classification under the CAA, which includes implementation of RACT for all existing major sources of VOCs and additional measures to meet the RFP VOC reduction requirement. Ultimately these proposed rule changes will assist in the protection of public health and the environment.

**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 rule changes promote the protection of the health, safety, and welfare of Michigan citizens by bringing our rules for existing VOC sources up to date with current levels of RACT. The RACT rules are based on the USEPA's CTG recommendations, which take into consideration the cost of controls as a function of emission reductions to achieve a less burdensome alternative for those required to comply.

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

R 336.1661 served to hold definitions to support R 336.1660. The applicable definitions have been incorporated into R 336.1660, making R 336.1661 obsolete. This rule package proposes to rescind the rule.

## **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 major fiscal impact on the agency. AQD staff will need to respond to possible increased requests for permit revisions from sources impacted by the rule revisions, and additional compliance monitoring may be required.

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

The Department of Environment, Great Lakes, and Energy (EGLE) has requested an appropriation increase for 2023 which includes additional staff in the AQD. If this request is successful, added AQD staff could be used to address the modest increase in activity specifically resulting from these rule revisions. Otherwise, any added work for the AQD will need to be absorbed by existing staff.

**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 proposed rules are expected to have a beneficial impact on individuals by providing cleaner air due to lower emissions and impacts of VOCs regulated under the Part 6, Michigan Air Pollution Control Rules.

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

The requirements are still needed to meet the requirements for moderate nonattainment classification under the CAA, which includes implementation of RACT for all existing major sources of VOCs and additional measures to meet RFP requirements. The proposed rules are reasonable due to cost considerations taken into account by the CTGs, as well as the regional adoption of the more stringent Consumer Products and AIM rules.

## **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 nor are they anticipated to increase or decrease the cost for other state 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.**

EGLE's requested appropriation for additional full-time employees in 2023 may provide for some resources that the AQD can utilize in addressing added costs to implement these rule revisions.

## **Rural Impact**

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

The proposed rules will be implemented equally across all applicable geographic areas, reducing VOC emissions in those areas, including rural areas. It is expected that the rule revisions will have positive impacts on public health and the environment.

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

These proposed rule changes will have impacts on affected sources, some located in rural areas, but mostly located in urban areas. The public is expected to be positively affected by emission reductions in both rural and urban areas.

## **Environmental Impact**

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

The proposed rule changes are expected to have beneficial impacts on the environment by lowering emissions of VOCs from existing sources.

## **Small Business Impact Statement**

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

The AQD followed federal guidelines when creating these rules and does exempt many small operations at existing facilities from controls.

**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 federal guidelines followed when making these rules do not specifically allow the exemption of small businesses but do allow for exempting small operations at affected facilities.

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

Under these proposed rules it is expected that some small businesses will be affected, in some cases due to the lowered exemption threshold for many of these proposed rules. In most cases it is anticipated that businesses subject to the proposed rules will need to increase recordkeeping frequency.

**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.**

EGLE followed federal requirements and model rules when creating these proposed rules, which do not establish differences in compliance or reporting requirements, or timetables specifically for small businesses who are not exempt.

**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.**

EGLE followed federal requirements and model rules when creating these proposed rules. Many small operations at affected facilities are exempt from the proposed rule revisions. Compliance and reporting requirements for all facilities were made as simplistic as possible within the constraints of the federal requirements.

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

EGLE followed federal regulations when creating the proposed rules. Where appropriate and allowed for, EGLE incorporated all the flexibility allowed by the federal guidance regarding performance, design, and operation standards in the proposed rules, including allowing combinations when permitted.

**20. 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 these rules. Small businesses must comply with federal regulations and the proposed rules apply equally across the nonattainment areas.

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

Any new recordkeeping or reporting from the proposed rules for previously and newly affected sources will likely be subsumed under current staff responsibilities and is not anticipated to create a need for additional resources.

Therefore, there is no anticipated additional cost for small businesses to produce reports required under the proposed rules.

**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.**

The cost for compliance for small businesses affected by the proposed rules are similar to that of large businesses.

Additionally, R 336.1602 provides for a demonstration to be made by any facility that can demonstrate the proposed RACT limits are not reasonable for their particular facility.

**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.**

Costs for legal, consulting, or accounting services for small businesses are expected to be reasonable, since these rules are defined by the USEPA as reasonably available technology. The AQD has attempted to explain compliance, recordkeeping, and limits in the rules for ease of implementation.

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

The rule revisions are required by the USEPA and therefore must be met by all affected sources at whatever cost is necessary. Efforts were made via workgroup input, to make the rules acceptable to affected industries while also meeting federal requirements. The proposed rule revisions are expected to be reasonable from a cost basis since these rules are defined by the USEPA as reasonably available technology.

**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.**

AQD costs for administering and enforcing the air quality rules are part of the annual operating budget and do not identify the portion attributed to small businesses.

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

The main public interest relative to these rule revisions is to improve the air quality in a reasonable fashion and to avoid federal sanctions that come as a result of not meeting CAA requirements. Implementing these rule revisions in their current form ensure that CAA requirements are being met and that impacts on small businesses are reasonable.

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

The AQD established workgroups 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 rules mainly through consultants looking out for small business interests.

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

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

It is expected that there will be compliance costs for these rules for businesses that have exemption levels reduced or are impacted by one of the new rules, R 336.1633 – R 336.1644 and R 336.1662. Actual costs are not known but would need to be determined on a case-by-case basis. All other proposed rule changes are revisions to previously controlled source categories and should not require any new significant compliance costs to businesses or groups.

The RACT rules are based on USEPA guidance and are expected to represent reasonable controls on existing sources.

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

Existing businesses which emit VOCs will be directly affected by, and bear the cost of, these proposed rules. Those businesses will benefit from having lower emissions from their applicable processes. Additionally, consumers will be directly affected by, potentially bear the cost of, and benefit from the R 336.1660 proposed rule changes to lower allowed VOC content in common household products, as well as some of the AIM coatings of R 336.1662.

**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.**

These proposed rules are expected to impose costs on affected sources that are required to change processes, materials, or add emission control equipment. Additional costs may be incurred with new recordkeeping requirements.

**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 are not expected to impact costs for individuals other than possibly some modest increase (or decrease) in costs of personal care products resulting from revisions to the Consumers Products rule and the new AIM rule (R 336.1660 and R 336.1662.)

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

Any changes to personal care products may affect costs and function, and would affect the public across the board.

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

Any changes to personal care products may affect costs and function, and would affect the public across the board.

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

The proposed rule changes are not expected to result in cost reductions to businesses. For groups and individuals, the proposed rule changes are not likely to reduce costs primarily because changes in products normally don't translate into cost savings to the customer.

**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 of these proposed rules are improved public health due to the expected decrease in VOCs and ozone in the lower atmosphere. The secondary benefit is continued compliance with the federal NAAQS for ozone, thereby avoiding implementation of permitting and monetary sanctions and the avoidance of additional ozone mitigation measures by the USEPA.

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

The proposed rules are based on a federal requirement. It is not known whether there will be any effect on business growth. The proposed rule revisions are intended to bring ozone nonattainment areas into attainment of the NAAQS, which will allow for business growth in the area.

**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.**

The proposed rule changes are applied consistently across the nonattainment areas and statewide in some cases, and will not disproportionately affect any businesses.

**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.**

The federal CAA dictates the requirement and the USEPA provides additional guidance. Stakeholder input was also taken into consideration in development of this analysis.

**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.**

No calculated estimates were prepared to assess the impact or cost-benefit of the proposed rules since EGLE was required to implement these proposed rules under the federal CAA, Section 182(b).

## **Alternative to Regulation**

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

These proposed rules mirror federal regulations and have no reasonable alternatives.

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

No statutory amendments are necessary since there are no reasonable alternatives.

**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.**

A market-based approach would not be approvable by the USEPA.

**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.**

Proposed rules R 336.1602 – R 336.1644 are based on federal regulations and there are no significant alternatives. The AQD developed the rules over many months with significant stakeholder involvement, and these proposed rule revisions reflect input received from stakeholders.

Proposed rules R 336.1660 – R 336.1662 are based on the federal regulation to comply with the 15% RFP requirement, which allows more flexibility to the state to implement what would be effective in reaching a 15 percent reduction in VOC emissions. The state reviewed the various OTC model rule phases for Consumer Product and AIM, and also considered what other states in the region have implemented. The proposed rule changes bring Michigan up to date with what is being done regionally while still reducing VOC emissions.

## **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.