

**Office of Regulatory Reinvention**  
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**REGULATORY IMPACT STATEMENT  
and COST-BENEFIT ANALYSIS (RISCBA)**

**PART 1: INTRODUCTION**

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at [orr@michigan.gov](mailto:orr@michigan.gov) no less than 28 days before the public hearing.

**1. Agency Information**

Agency name:	Department of Environmental Quality (DEQ)	
Division/Bureau/Office:	Air Quality Division (AQD)	
Name, title, phone number, and e-mail of person completing this form:	Erica Wolf, Environmental Quality Analyst, 517-284-6766 wolfe1@michigan.gov	
Name of Departmental Regulatory Affairs Officer reviewing this form:	David Fiedler	

**2. Rule Set Information**

ORR assigned rule set number:	2017-062 EQ
Title of proposed rule set:	Part 4. Emission Limitations and Prohibitions – Sulfur-Bearing Compounds

**PART 2: KEY SECTIONS OF THE APA**

**MCL 24.207a “Small business” defined.**

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

**MCL 24.232** (8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.

**MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).**

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
  - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
  - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
  - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
- (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
- (a) 0-9 full-time employees.
  - (b) 10-49 full-time employees.
  - (c) 50-249 full-time employees.
- (4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
- (5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

**MCL 24.245** (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

### PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

#### Comparison of Rule(s) to Federal/State/Association Standards:

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

R 336.1401, R 336.1401a, R 336.1402, and R 336.1404 are approved State Implementation Plan (SIP) rules that are federally enforceable. They set limits of sulfur dioxide from power plants and stationary sources to allow the State of Michigan to comply with the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. R 336.1420 requires compliance with the federal Clean Air Interstate Rule (CAIR) sulfur dioxide trading program.

- A. Are these rule(s) required by state law or federal mandate?

As SIP approved rules, R 336.1401, R 336.1401a, R 336.1402, and R 336.1404 cannot be removed from the SIP without a replacement “as stringent as” these requirements to avoid non-compliance with the sulfur dioxide NAAQS. R 336.1420 is required by federal mandate.

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

These rules do not exceed a federal standard or law.

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

Every state is required to comply with the NAAQS for sulfur dioxide. Every state named in the CAIR regulation is required to comply with those requirements.

- A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

The rules do not exceed standards in other states as explained in Item 2.

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

One definition in R 336.1401a is duplicated in R 336.1121(c), and R 336.1902(1)(t) and (u) now contain the requirements of R 336.1420. There are no other State of Michigan laws, rules, or legal requirements that may duplicate, overlap, or conflict with the remainder of the proposed rules.

- A. Explain how the rule has 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.

These rules exist to allow the State of Michigan to comply with federal standards. There are no other State of Michigan or local laws that may duplicate, overlap, or conflict with the remainder of the proposed rules. Rescinding R 336.1401a will avoid duplication of AQD rules.

4. If MCL 24.232(8) applies and the proposed rule(s) is more stringent than the applicable federally mandated standard, **a statement of specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

The proposed rules are not more stringent than any federally mandated standard.

5. If MCL 24.232(9) applies and the proposed rule(s) is more stringent than the applicable federal standard, **either the statute that specifically authorizes the more stringent rule(s) or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

The proposed rules are not more stringent than any federally mandated standard.

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

6. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

R 336.1401, R 336.1401a, R 336.1402, and R 336.1404 are approved SIP rules that are federally enforceable. They set limits of sulfur dioxide from power plants and stationary sources to allow the State of Michigan to comply with the NAAQS for sulfur dioxide.

The proposed changes are clerical in nature. The proposed changes to R 336.1401, R 336.1402, and R 336.1404 clarify which testing methods and federal standards are applicable to the rules. The proposed changes to R 336.1401a remove a redundant definition.

Both R 336.1420 and R 336.1902(1)(t) and (u) require compliance with the federal CAIR sulfur trading program. Rescinding R 336.1420 will eliminate this redundancy. R 336.1902 has been approved.

- A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

Due to the clerical nature of the proposed changes, there is no estimate of a change in the frequency of the targeted behavior.

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

Due to the clerical nature of the proposed changes, there is no difference between the current and desired behavior.

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

The desired outcome is to make the clerical changes and simplify the AQD rules.

**7. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.**

If these rules were rescinded without an equal replacement, the State of Michigan could be subject to a Federal Implementation Plan for non-compliance with the sulfur dioxide NAAQS and the CAIR requirements, and to federal and private lawsuits for non-compliance.

**A. What is the rationale for changing the rule(s) instead of leaving them as currently written?**

To make clerical and technical corrections as well as simplify the AQD rules.

**8. Describe how the proposed rule(s) 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 allow continued compliance with the CAIR requirements and the NAAQS sulfur dioxide requirements. These federal requirements were promulgated to protect the public health without being overly burdensome on industry.

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

The AQD is proposing to rescind R 336.1420 because those requirements are now found in R 336.1902(1)(t) and (u).

**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 reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

**10. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).**

Due to the clerical nature of the proposed changes, there is no fiscal impact on the agency.

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

No appropriation has been made.

**12. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.**

These rules apply to industry and do not place any burden on individuals.

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

As stated above, there is no burden placed on individuals.

**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 such other state or local governmental units 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.

These rules apply to industry and not state or local governmental units, therefore, there should be no increase or decrease in revenues or costs for these governmental units.

- A. 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.

As stated above, these rules do not impact state or local governmental units, therefore, there should be no increase or decrease in revenues or costs for these governmental units.

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

These rules do not impact state or local governmental units including any city, county, town, village, or school district.

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

As stated above, these rules do not impact state or local governmental units including any city, county, town, village, or school district.

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 rule(s).

No appropriation has been made.

**Rural Impact:**

16. In general, what impact will the rule(s) have on rural areas?

Industry subject to these rules in rural areas will remain subject to the rules.

- A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The imposition of the proposed rules will not result in additional costs to public or private interests simply due to their rural location.

**Environmental Impact:**

17. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

Yes, the proposed rules retain the existing requirements for reduced sulfur dioxide emissions from power plants and other stationary sources throughout the State of Michigan.

**Small Business Impact Statement:**

18. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The proposed rules are based on federal requirements, which do not allow exemptions for small businesses if the business is a source subject to the requirement.

- 19.** If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) 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 rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

Any attempt to reduce the impact to small businesses would not allow the State of Michigan to comply with the federal requirements.

- A.** Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

These rules were originally promulgated in 1980 and 2008. They are applicable to power plants and other stationary sources of sulfur dioxide emissions. The rules were promulgated to comply with federal requirements. The proposed changes to the rules are clerical in nature and do not alter the number of sources affected by the rules.

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

These rules were established to comply with federal requirements in 1980 and 2008. The federal requirements do not allow separate compliance requirements for small businesses if they are subject to the regulations.

- 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 federal requirements upon which the rules are based do not simplify compliance requirements for small businesses.

- D.** Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The federal requirements upon which the rules are based do not allow such changes.

- 20.** Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The rules were originally promulgated in 1980 and 2008 and treat all subject sources equally. The proposed rule changes would also treat all subject sources equally and would not have any disproportionate impact on small businesses.

- 21.** Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

There are no new reporting requirements in the proposed rules.

- 22.** Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There are no new compliance costs associated with the proposed rules.

- 23.** Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

There are no new compliance costs associated with the proposed rules.

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

Because there are no new compliance costs associated with the proposed rules, small businesses would have the ability to comply if they are subject to the rules.

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.

There are no new administration or enforcement costs with the proposed rules for the AQD.

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

The proposed rules do not exempt or set lesser standards for compliance for small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

The proposed rules are clerical and technical corrections. No small business involvement was necessary.

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

No small businesses were involved in the rule 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.

There are no additional statewide compliance costs.

- A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

The proposed rules will continue to require compliance by power plants and stationary sources that emit sulfur dioxide.

- 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)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs are imposed as a result of the proposed rules.

29. Estimate the actual statewide compliance costs of the proposed rule(s) 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 applicable to power plants and stationary sources that emit sulfur dioxide, they are not applicable to individuals or the public.

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

The proposed rules are not applicable to individuals.

- B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The proposed rules are not applicable to individuals.

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

There would be no additional cost reductions as a result of the proposed rules. The proposed rule changes are clerical in nature.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

The benefit of the proposed rules is continued compliance with the federal NAAQS for sulfur dioxide and the federal CAIR program.

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

The proposed rule changes are clerical in nature and will have no impact on business growth or job creation.

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 clerical in nature and will not disproportionately affect any business. The proposed rules will not affect individuals.

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 a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

Due to the clerical nature of the proposed rule changes, the AQD did not rely on any outside sources of information when preparing this document.

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

Due to the clerical nature of the proposed rule changes, no estimates were made.

**Alternatives to Regulation:**

35. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

Keeping the rules as promulgated is a reasonable alternative, but it would lead to confusion in the regulated community and redundant AQD rules.

A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

There are none.

36. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

It would not be feasible to replace the proposed or existing rules with a private market-based mechanism. The rules were promulgated to comply with the federal NAAQS for sulfur dioxide and the federal CAIR program.

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

The proposed rule changes are clerical in nature; no significant alternatives were considered.

**Additional Information:**

38. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

The proposed rules do not require additional instructions.



↓ To be completed by the ORR ↓

**PART 4: REVIEW BY THE ORR**

Date RISCBA received:	2-26-2019/ 1-23-2019
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Date RISCBA approved:	<b>3/5/19</b>
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Date of disapproval:	
Explanation:	