

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:

2023-11 EQ

Title of proposed rule set:

Part 1. General Provisions

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 purpose of rules contained in Part 1 of the Michigan Air Pollution Control Rules (MAPCR) are to provide definitions to key terms found throughout the rules. The proposed rule revisions for Part 1 are being done in order to align with federal standards. They will revise and add additional definitions needed to support revisions done in subsequent rule parts developed to fulfill the federal Clean Air Act (CAA) 42 U.S.C. 7401 et seq. The proposed rules add additional definitions to further support and clarify the MAPCR, as well as revise existing definitions for “Carcinogens” and exemptions for the “Volatile organic compound” (VOC) and “Toxic air contaminant” (TAC) definitions to align with the United States Environmental Protection Agency’s (USEPA) regulatory definitions and toxics research findings.

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

MCL 324.5512 requires the department to promulgate rules for, among other things, the purpose of controlling or prohibiting air pollution and complying with the CAA. A majority of the proposed rules in this submittal are necessary to define language used in another part of the MAPCR that addresses these requirements by limiting VOC emissions under the requirements of the CAA under Section 182(b), as it pertains to ozone nonattainment areas. Additional proposed rule changes are based on the USEPA final approval to revise the regulatory definition of VOCs under the CAA.

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 rule definitions, when used, align with other similarly situated states 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 rules do not exceed standards in similarly situated states.

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 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 rule revisions, where applicable, have been coordinated with USEPA equivalent definitions, American Conference of Governmental Industrial Hygienists threshold limit values, United States Department of Labor Occupational Safety and Health Administration, the United States Food and Drug Administration, and other applicable resources, to ensure consistency and reduce duplicative efforts in determining compliance or applicability of sources at a facility between state and federal laws.

Purpose and Objectives of the Rule(s)

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

The purpose of the proposed rules is to serve as a reference and support understandability for the terms used in other parts of the rules. The proposed rules are designed to increase the frequency and success of that behavior by aligning the current and new definitions with regulatory and technical resources to support the rest of the MAPCR.

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

The regulated community should utilize the new and updated definitions in the proposed rules every time they are referenced in the corresponding parts of the rules.

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

Currently, Part 1 rules do not provide definitions for recent MAPCR revisions and do not contain new VOC and TAC exemptions recently exempted by the USEPA from the federal VOC definition, therefore there is a lapse in understandability. The desired changes to these rules will help define terms to support more recent and pending MAPCR revisions and align Michigan's VOC and TAC definitions with the USEPA's definition.

C. What is the desired outcome?

The desired outcome of the proposed rule revisions for Part 1 is to align state and federal definitions as well as provide additional clarity to support the rest of the MAPCRs.

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 these rules, it is likely for potential misalignment and confusion to occur surrounding language used in the recently revised MAPCRs.

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 sufficient definitions are incorporated and revised, as needed to support and align with the MAPCR; previous revisions made to subsequent rule parts developed to fulfill the federal CAA; and definitions based on current technical information.

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 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 by adding additional definitions to support and clarify the interpretation and compliance of the MAPCR, leading to increased interpretability and understanding of applicability for the regulated community. This also is achieved by revising definitions to align with regulatory definitions and toxics research.

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/definitions 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).

There is expected to be no net fiscal impact on EGLE because the proposed rules improve clarity through definitions and do not impact tangible expenditures.

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 has been made for these 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 individuals 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 individuals 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 will not affect revenues, nor are they anticipated to increase or decrease the cost 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.

The change in definitions will not require any changes by any city, county, town, village, or school district.

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.

These rules do not require any actions that governmental units must take to be in compliance 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.

Because there are no additional expenditures associated with the proposed definition changes, no appropriation to state or local governmental units has been made nor has a funding source provided any additional expenditures associated with these proposed rules.

Rural Impact

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

The rules will not have any impact on rural areas that is 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, increased understanding leads 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.

The proposed rules do not directly regulate businesses, therefore incorporation of an exemption for small businesses was not applicable.

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 directly regulate businesses. An exemption for small businesses was not applicable.

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

The proposed rules do not affect small businesses.

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 proposed rules do not affect small businesses or their administrative costs.

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 affect small businesses or establish compliance or reporting requirements.

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

The proposed rules do not affect small businesses or establish performance standards.

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 these 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.

The proposed rules do not require any additional reports by small businesses.

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 affect small businesses and should not increase the cost of compliance for 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. The proposed rules may even reduce needs for some services to small business by improving potential interpretation of the MAPCR due to these rules increasing clarity and alignment with other federal standards.

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

The proposed rules should not impose extra cost to small businesses.

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 workgroups with stakeholders from all across industry as well as consultants who represent small business interests.

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)

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

These proposed rules update definitions used in other MAPCR parts. These rule amendments impose no additional direct compliance costs on businesses or groups. However, businesses or groups are likely to experience indirect compliance costs resulting from the impacts these changes would have on other rule parts. The main changes that may impact compliance costs deal with revisions to the TAC and VOC definitions. Depending on the exact amount of each specific TAC or VOC substances that are emitted from each unit at a facility, specific exemptions added or removed through the updated definitions in the proposed rules could impact the company's permitting process as outlined within the Part 2 rules. The department estimates about 2,000 facilities in Michigan report emissions annually. Of those, approximately 30% report for all substances of VOC and hazardous air pollutant (HAP) emissions, which also covers TAC emissions. The department estimates less than 1% of the facilities in Michigan that report for all substances of VOC and HAP emissions might see potential increases in compliance costs due to these revisions. The compliance costs could range from \$0 - \$1,000s, since some of these changes may only require a change to recordkeeping for a facility that already keeps similar records, to a larger compliance cost depending on the potential need for control equipment. EGLE does not think the latter will be a common scenario, but rather expects the compliance costs from these changes would be absorbed through current business practices. Other definitions were changed to support revisions promulgated in the Part 6 rules in April of 2023. These definitions do not change the cost of compliance established in those rules but rather provide additional clarity to support applicability of those rules on industry.

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 a wide variety of business sectors, however the proposed updates impact facilities related to the following: carcinogens, cold cleaners, coating processes, motor vehicle material, synthetic natural gas, TACs, and VOCs. Some examples of source types could include, but are not limited to, surface coating operations, automobile repair shop, metal fabrication or manufacturing business, printing operations, and many others.

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.

No additional direct costs will be imposed on businesses and other groups as a result of these proposed rules because they are changing definitions only. However, these rules operate in tandem with other rules, which may impose additional indirect costs depending on applicability, such as businesses that produce VOC or TAC emissions, which may need to change recordkeeping calculations. Based on the proposed changes to exempt or remove exemptions for VOC and TAC definitions, this could potentially impact a company's permitting process and their requirements under Part 2. Only a small fraction, less than 3% of businesses, are expected to be impacted by these changes. The revisions are likely going to impose additional or revised recordkeeping on facilities which is estimated to increase costs for the businesses listed under 28A of less than \$500. In very rare instances, facilities applying for a permit under the Part 2 rules may be required to go through additional review for TACs if they are now above the set rule thresholds due to this definition change. Based on this scenario, the facility may be required to install new control equipment and or only be allowed to emit a certain amount of the TAC per its permit requirements. This type of cost could range anywhere from \$0 to \$1,000s depending on potential control equipment needed. Again, this type of scenario is not expected to happen much, if at all based off of these rule revisions.

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 definitions aligned with USEPA regulatory definitions and current toxic research and do not create any additional compliance costs on regulated individuals or 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?

The proposed rules are based on federal standards. There is no additional cost over the cost to comply with the federal standards. There are no qualitative or quantitative impacts to 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 include some changes which could result in exempting certain chemical compounds, which could decrease compliance costs under other applicable rule parts.

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 support for language used throughout the MAPCRs by assuring definitions are added and updated as appropriate. The secondary or indirect benefit of the proposed rules is the increased level of clarity to help support interpretation of the MAPCRs.

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.

There is not expected to be a disproportionate impact on any individuals or businesses as a result of their industrial sector, segment of the public, business size, or geographic location.

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 sources EGLE relied on to compile the regulatory impact statement include the Michigan Air Emissions Reporting System, the internal Michigan Air Compliance and Enforcement System, the USEPA Control Technique Guidelines, USEPA's Guidelines for Carcinogen Risk Assessment, the USEPA Provisional Peer-Reviewed Toxicity Values, American Conference of Governmental Industrial Hygienists, United States Department of Labor Occupational Safety and Health Administration, and the United States Food and Drug Administration. EGLE does not have a specific reporting category for TAC emissions, but these would fall within the broader reporting category for HAP emissions. EGLE relied on overall number of facilities reporting emissions to the agency compared to the estimated percentage of facilities that report any VOC or HAP emissions, as well as staff knowledge of rule implementation, to determine potential regulatory impact outcomes. In answering the questions for the regulatory impact statement, EGLE considered the broader impacts of the proposed rule updates to these definitions due to their applicability to support other rules in the MAPCR beyond Part 1. These proposed revisions are based on USEPA definitions and toxics research documentation which further supplied information to staff regarding potential impacts and that information was utilized to compile 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 were made using data from the Michigan Air Emissions Reporting system and internal Michigan Air Compliance and Enforcement System which relies on staff input for data. Some assumptions on the amount of facilities that would be impacted by the very specific VOC and TAC substance definitions were made based on the staff knowledge of how frequently those substances are emitted from industrial processes. The resources used to support the proposed rules were USEPA Control Technique Guidelines that outlined definitions for various processes, and published research and academia from sources such as the USEPA's Guidelines for Carcinogen Risk Assessment, USEPA Provisional Peer-Reviewed Toxicity Values, American Conference of Governmental Industrial Hygienists, United States Department of Labor Occupational Safety and Health Administration, and the United States Food and Drug Administration. Upon review, the sources demonstrated a need for the revisions made in these proposed rules.

Alternative to Regulation

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

There are no reasonable alternatives to the proposed rules. Since many of the 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, 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.

A private market-based mechanism would not allow for these definitions to support the MAPCR therefore feasibility is not an issue. 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.

No significant alternatives were discussed.

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.

There are no instructions regarding the method of complying with the rules.