

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

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

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Marijuana Regulatory Agency

Name of person filling out RIS:

JESSICA FOX

Phone number of person filling out RIS:

517-282-8640

E-mail of person filling out RIS:

FOXJ12@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2021-92 LR

Title of proposed rule set:

Industrial Hemp Rules for Marihuana Businesses

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.

7 CFR Part 990 established the Domestic Hemp Production Program under the Agricultural Improvement Act of 2018. The regulations in the CFR only apply to states that do not have a USDA-approved hemp plan. The CFR does not contain any specific standards that parallel the rules and rule updates being made in this instance. There are no standards set by a state or national licensing agency or accreditation association.

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

A portion of these rules are required by the Medical Marihuana Facilities Licensing Act (MFLA) and the Michigan Regulation and Taxation of Marihuana Act (MRTMA). There is no federal mandate for these proposed rule changes.

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.

These rule changes do not exceed any federal standards or laws. There are no federal standards or laws in place related to these specific standards.

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

Several surrounding states have both approved industrial hemp plans and medical and/or adult-use marihuana legalized. Michigan, however, is the first state to update the definition of marihuana to not be solely based on Delta-9 THC, but to consider other isomers, etc. and require a limit be set for total THC content that differentiates industrial hemp and marihuana consumer products.

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

These proposed rule changes do not exceed standards in other states. Other states do not have these standards.

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 laws, rules, or other legal requirements.

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 rules, to the extent practicable, have been coordinated with the current rules in place regarding industrial hemp production and marihuana cultivation, processing, and sales. The agency has taken care to ensure that the rule changes and new standards are not duplicative of rules currently in place.

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.

MCL 24.232(8) does not apply, there is no applicable federally mandated 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.

MCL 24.232(9) does not apply, there is no applicable 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.

The rules are intended to create a limit for total THC content for industrial hemp products. There are items that are being produced and sold that contain enough total THC to be intoxicating but are being marketed as industrial hemp products because the Delta-9 THC is below the threshold. Additionally, there is a desire to create marihuana products from industrial hemp products through a conversion process. This conduct is occurring daily.

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

These proposed rule changes would require all products to be created within the regulated market by a licensed marihuana business. This should dramatically decrease the behavior and increase the safety of products available to consumers.

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

The desired behavior would be that these products are created under the purview of the agency with specific safety protocols and safety testing in place to ensure consumers have access to the safest products. These products are currently being made outside of the market with no controls.

C. What is the desired outcome?

The desired outcome is to regulate intoxicating products, make them safer for consumers, and increase the types and amounts of products available to consumers.

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.

The harm is that intoxicating products are being produced with no regulatory controls, are being marketed to consumers as non-intoxicating, and are not required to undergo any safety testing to ensure that they are reasonably free from contaminants.

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

As written, this conduct would continue, and consumers would be at risk of harm and injury.

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 rules would take an intoxicating product that is being produced without any regulatory controls and place it within the regulatory control of the agency. The products would be required to undergo rigorous testing to better ensure safety for consumers. This is the least burdensome alternative because the agency already regulates intoxicating products made from marihuana.

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

These rules are updating the Industrial Hemp for Marihuana Businesses Rule set, they do not make any other rules obsolete, unnecessary, or proper for rescission.

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).

There will be 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 rules.

No appropriations have been made to any governmental units because of these rules. No additional expenditures are anticipated or intended with the proposed rules.

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 rules must ensure the safety, security, and integrity of the operation of marihuana businesses. Any burdens would be in place as required by the MMFLA, Marihuana Tracking Act (MTA), and MRTMA.

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

The rules must ensure the safety, security, and integrity of the operation of marihuana businesses and the handling of industrial hemp. Any burden is reasonable in the proposed rule changes as it complies with the statutory requirement for its consideration.

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.

There are no anticipated increases or decreases in revenues or costs to other state or local government units because of the proposed rule changes. Any local or state change to revenue may occur via the statutory provisions as it concerns how the funds, fees, or taxes are allocated or expended.

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

There will be no program, service, duty, or responsibility imposed by the proposed changes to these rules.

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

There are no anticipated actions that a governmental unit must take to comply with 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.

No appropriations have been made to any governmental units because of these rule changes. No additional expenditures are anticipated or intended with the proposed rules.

Rural Impact

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

The proposed rule changes are not expected to impact rural areas in as much as the rules apply to all marijuana businesses regardless of location.

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

The proposed rule changes are not expected to effect public or private interests in rural areas.

Environmental Impact

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

These proposed rule changes do not have any impact on the environment other than the disposal of waste materials created during the production of these projects. All waste disposal is required to be in compliance with NREPA and has been coordinated with EGLE.

Small Business Impact Statement

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

The proposed rule changes are designed to regulate all commercial marijuana businesses, regardless of their size. They are intended to allow any business, including a small business, to obtain a license in the industry.

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 will not have a disproportionate impact on small businesses. The rule changes apply to all marijuana businesses regardless of size. It is not lawful or feasible to reduce the impact on small businesses.

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

It is uncertain how many small businesses may be affected by the proposed rule changes. However, the belief is that these proposed rules will possibly allow smaller businesses to gain more market share in the marijuana industry.

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

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rule changes will apply to all businesses. The rule changes were drafted to be the least burdensome on all businesses.

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 agency did not consolidate or simplify compliance and reporting requirements for small businesses with the proposed rule changes.

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

The agency did not establish performance standards to replace design or operation standards required by these rule changes.

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

The proposed rule changes affect all businesses rather than specifically small businesses. Therefore, there is no disproportionate effect on a small business because of its size or geographic location.

21. 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 rule changes require a business that would like to engage in the newly allowed conduct to submit a plan. The same plan details are required regardless of business size. It is unknown what the cost of submitting a plan will be, but it should be minimal.

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 will be no increased costs of compliance for a small business related to the costs of equipment, supplies, or administrative costs.

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.

Small businesses will not incur any costs of legal, consulting, or accounting services to comply with the rules other than what any marijuana business would incur.

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 to a small business that will cause economic harm to a small business or the marketplace because of the proposed rule changes.

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.

The proposed rule changes apply to all businesses, regardless of size or geographic location. Therefore, exempting or setting lesser compliance standards for small businesses could create a potential threat to health and safety of the state of Michigan.

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

The proposed rule changes apply to all businesses, regardless of size or geographic location. Therefore, exempting or setting lesser compliance standards for small businesses could create a potential threat to health and safety of the state of Michigan.

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

Workgroups were conducted that were comprised with varying levels of business owners, from small or large businesses and members of the public and they made recommendations to the Agency. Small businesses were not exclusively included or excluded by the very nature of being a small business.

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

Small business was involved in the development of rules only in as much as making recommendation during the workgroups and not specifically to the agency on specifics concerning the proposed rule changes.

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

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

The MMFLA and MRTMA require the agency to promulgate rules that ensure the safety, security, and integrity of the operation of marijuana businesses. The statutes also require licensees to comply with standards and requirements for marijuana businesses. There are costs associated with the statutory requirements implemented through the proposed rule changes. This is an existing program, so the actual costs are already in place. These rule changes will not increase or decrease the compliance costs.

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

The rule changes apply to applicants and licensees. There could be additional businesses or groups affected by, bear the cost of, or directly benefit from the proposed rules. Examples may be CPAs, lab equipment companies, surveillance equipment companies, third-party integrators, and point of sale companies.

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 cost will be imposed on businesses or other groups. Only applicants and licensees are affected by the proposed rule changes.

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 do not require a marijuana business to engage in any specific conduct. Instead, it allows a business, that would like to produce specific products from industrial hemp to make those products. Therefore, the actual compliance cost would be nothing.

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

Marijuana businesses that want to make marijuana products from industrial hemp are affected by these rules.

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

The regulated industry could have an impact on the cost and sale of medical marihuana, and whether someone chooses to become a medical marihuana patient with adult-use marihuana available. The proposed rule changes could make more types and products available in the regulated market.

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 impact businesses, there are no cost reductions as a result of the proposed rules.

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 benefit is that these products will now be required to be produced in the regulated market and tested to enhance safety for consumers. This may also allow for new product types to come into the market for consumers. This may also lead to an increase of products available for production and sale.

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

The licensing and regulatory framework that is created will establish a commercial supply and distribution mechanism for marihuana. The license categories create new businesses in the industry that otherwise were not licensed or regulated and will impact business growth and job creation specifically for those interacting with the licensed marihuana business.

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 specifically focus on the marihuana industrial sector as they implement aspects of the regulatory framework as required by the MMFLA and MRTMA. The operation of these businesses impacts the marihuana customer segment of the public through increased access to marihuana that has been tracked, tested, and labeled to ensure safety for customers. There is no expected disproportionate effect due to business size or geographic location.

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.

Sources from other states are the following:

Illinois:

<https://www2.illinois.gov/rev/research/taxinformation/other/Pages/Cannabis-Taxes.aspx>
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3503&ChapterID=35>

Minnesota:

<https://www.revisor.mn.gov/statutes/cite/297D.08>
<https://www.revisor.mn.gov/laws/?id=311&year=2014&type=0>

Ohio:

<https://mjbizdaily.com/ohio-mmj-market-could-generate-200m-400m-in-sales/>
[https://www.medicalmarijuana.ohio.gov/Documents/advisory-committee/Meeting%20Materials/2021-17%20\(June\)/MMAC%20Updates%20June%202021.pdf](https://www.medicalmarijuana.ohio.gov/Documents/advisory-committee/Meeting%20Materials/2021-17%20(June)/MMAC%20Updates%20June%202021.pdf)
<https://www.medicalmarijuana.ohio.gov/rules>

Pennsylvania:

<https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/MedicalMarijuanaTax/Pages/default.aspx>
<https://www.pa.gov/guides/pennsylvania-medical-marijuana-program/>

OTHER:

<https://www.leafly.com/news/industry/state-by-state-guide-to-cannabis-advertising-regulations>
House Fiscal Agency and Senate/Department Reports/LAB coalition

Status of State and Tribal Hemp Production Plans for USDA Approval | Agricultural Marketing Service

<https://www.federalregister.gov/documents/2021/01/19/2021-00967/establishment-of-a-domestic-hemp-production-program>

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.

There were no estimates made because the rule changes impact an individual licensee or registrant as well as an applicant for licensure or registration. No estimate could consider the setting where an individual may use his or her license or registration. Because the rules only impact an individual, and impact all in the same way, the assumptions made was that no additional cost or benefit would result from the proposed rule changes.

Alternative to Regulation

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

The rules are required by the MMFLA and MRTMA; there is no reasonable alternative to the proposed rules.

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

The rulemaking provisions of the MMFLA and MRTMA would have to be removed for any such alternative to occur.

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.

The rules are required by the MMFLA and MRTMA; private market-based systems cannot serve as an alternative. There are no private market based systems utilized by other states.

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.

Since the rules are specifically required by the MMFLA and MRTMA, there are no alternatives to the proposed rules that the agency could consider. They are necessary to ensure the safety, security, and integrity of the operation of marijuana facilities.

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.

There are no additional instructions for complying with the proposed rule changes.