

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

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

Agency Information:

Department name:

Natural Resources

Bureau name:

Executive Division

Name of person filling out RIS:

Steve Brisson

Phone number of person filling out RIS:

231-436-4100

E-mail of person filling out RIS:

BRISSENS@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2022-52 NR

Title of proposed rule set:

Mackinac Island State Park Commission – General Rules

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 proposed amendments confirm that electric bicycles in Mackinac Island State Park are banned but clarifies that those with a disability may use the type of electric bicycle that assists the user only when the user is pedaling. This ensures that electric bicycles are used only in a way to enable persons with a disability to enjoy bicycling, and not as motorcycles. This change to allow disabled persons to use electric bicycles is required by state and federal disability laws. It is also consistent with rules promulgated in 2020 by the National Park Service, the U.S. Fish and Wildlife Service, and the federal Bureau of Land Management. Those federal rules are similar to the proposed rules in that they consider electric bicycles powered exclusively by an electric motor to be more like off-road vehicles than bicycles and allow only pedal-assist electric bicycles to be used on lands managed by the respective agencies. See 85 FR 69175 (NPS), 85 FR 69223 (USFWS), and 85 FR 69206 (BLM).

The proposed amendments also ban fireworks in Mackinac Island State Park. The National Park Service already bans fireworks in national parks.

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

Yes, State and federal disability laws require the Commission to make a reasonable accommodation for persons with disabilities to enjoy bicycling in Mackinac Island State Park. State law specifically requires the Commission to regulate the use of electric bicycles “in a manner that complies with the Americans with disabilities act of 1990 . . . and the persons with disabilities civil rights act . . .” MCL 257.662a(11). The proposed rules implement that requirement.

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 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.

Regarding electric bicycles:

According to the National Conference of State Legislatures, as of February 2021, 43 states and the District of Columbia specifically address electric bicycles in their laws. Delaware, Iowa, Nebraska, Vermont, and Hawaii regulate all electric bicycles just as regular bicycles. But Michigan, along with many other states, allows for certain types of electric bicycles to be regulated more like motor vehicles than bicycles. See MCL 257.662a. The proposed rules are in accordance with Michigan law regarding electric bicycles.

Mackinac Island is unique in that there is not only a ban on motor vehicles, but an effort to maintain the historic feel of the Island. Other than the City of Mackinac Island, the Commission is not aware of another governmental body in the United States that has a regulatory mandate truly comparable to that of the Commission.

Regarding fireworks:

It is common for states to ban fireworks in their state parks. Michigan's neighbor states, Wisconsin and Ohio, for example, ban fireworks in their state parks. And the Michigan Department of Natural Resources also bans fireworks in land under its jurisdiction, including state parks. Rule 299.922(ee). But Mackinac Island State Park is governed by the Mackinac Island State Park Commission, not the Department of Natural Resources. The proposed rule banning fireworks in Mackinac Island State Park brings the park into alignment not only with other states, but with the other state parks in Michigan.

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

As noted above, some states treat all electric bicycles as regular bicycles. Michigan is not one of those states. Michigan law explicitly authorizes the Mackinac Island State Park Commission to regulate electric bicycles in Mackinac Island State Park differently than regular bicycles. MCL 257.662a. Doing so is key to preventing the introduction of what are essentially motorcycles within Mackinac Island State Park. The Island has an international reputation as being vehicle-free. This reputation generates hundreds of millions of dollars in revenue within Michigan, and the livelihood of thousands of people depends on it. So, it is critical that the reputation is protected.

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

Regarding electric bicycles, Michigan law already bans "motor vehicles," MCL 324.76507, and "electric bicycles", MCL 257.662a(7), in Mackinac Island State Park.

Regarding fireworks, there is no current Michigan law that expressly prohibits their use within Mackinac Island State Park.

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.

Regarding electric bicycles, the proposed rule is neither duplicative nor contrary to the two statutes cited above for two reasons:

1)The Commission is required to make reasonable accommodations for persons with disabilities. That includes a requirement that the Commission permit disabled persons to use pedal-assist electric bicycles. The statute banning electric bicycles in Mackinac Island State Park requires the Commission to administer the ban consistently with state and federal disability rights laws, and the proposed rule is the implementation of that mandate. MCL 257.662a(11).

2)Even though MCL 257.662a(7) bans electric bicycles in Mackinac Island State Park, that statute does not include an enforcement mechanism. See MCL 257.656(1). So, law enforcement officials could not write a ticket based on the violation of MCL 257.662a(7). That leaves law enforcement officials with enforcing the much more general ban on “motor vehicles,” which is a misdemeanor. MCL 324.76507. But that creates an uncertain situation for law enforcement because, as explained, not all electric bicycles should necessarily be regulated as motor vehicles. And a misdemeanor may be too severe depending on the circumstances. By promulgating the ban on electric bicycles as a rule, it not only provides much more clarification to law enforcement officials about the types of electric bicycles that are prohibited, but it allows a violation of the rule to be prosecuted as a civil infraction. MCL 324.76901(3). This provides law enforcement officials with greater flexibility to adapt to different circumstances.

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 rules are not more stringent than a federal standard.

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

The proposed rules are not more stringent than a 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.

It is becoming common for people to ride electric bicycles that are banned, especially class 2 and class 1 bicycles, by people without a disability. Businesses on Mackinac Island are purchasing banned bicycles for their able-bodied employees to use.

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

Giving law enforcement more options and greater clarity to enforce the ban will decrease the prevalence of violations.

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

The current practice is widespread disregard of the ban, and the desired practice is widespread compliance with the ban.

C. What is the desired outcome?

To maintain the historic character of the island in regard to the banning of motorized vehicles and elimination of fireworks; to reduce the danger of fire in the park in regard to fireworks.

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 the deterioration of the Island’s international reputation as vehicle-free refuge, the danger posed by using electric bicycles around horses, and widespread violations of a ban that has been in place under state law for more than a century. The harm is ongoing, and will likely get worse, as residents and visitors get accustomed to riding what are essentially motorcycles on Mackinac Island. Both the City of Mackinac Island and the Mackinac Island State Park Commission are deeply concerned about this harm.

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

The rule on electric bicycles will mirror the municipal ordinance, allowing for law enforcement to consistently enforce both. Additionally, as explained above and below, the revisions will provide law enforcement much greater clarity on how to enforce the ban in the context of state and federal disability laws, along with providing law enforcement with more flexibility on whether to issue citations for a civil infraction or a misdemeanor.

The rule against fireworks preserves the historic atmosphere and safety of park property.

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.

Motor vehicles, by law, are banned in Mackinac Island State Park. Electric bicycles are more like motor vehicles than bicycles. But state and federal disability laws require that the ban on motor vehicles permit a reasonable accommodation for people without the ability to pedal a bicycle without assistance. So, the least burdensome way to both enforce the ban on motor vehicles and accommodate persons with disabilities is to ban all electric bicycles, except that persons with a disability can use only class 1 electric bicycles.

Electric bicycles with motors that operate with a throttle rather than only to assist with pedaling can travel at high rates of speed and essentially function as electric motorcycles or mopeds. They pose a danger to health and safety when other persons on the pathways are using horses, walking, or using ordinary bicycles. Banning electric bicycles is the least burdensome way to enforce the law banning motor vehicles and protect the public.

Because of the motor vehicle ban on the Island, residents and visitors rely heavily on horses to provide transportation. Fireworks can spook horses. They are also a fire danger. Banning them is the least burdensome way to alleviate those dangers and bring the Island in line with other state parks in Michigan.

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

There are no rules that are obsolete or unnecessary at this time.

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 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 rules.

No agency appropriation has been made.

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 will not place burdens on individuals. They simply implement an existing ban but do so in a way that is consistent with disability rights laws. If anything, the rule lifts the burden of uncertainty from those with disabilities who genuinely need class 1 electric bicycles.

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

No burden was identified.

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 amendments to the rules do not impact the revenues of state or local governmental units. There will be no increase or decrease in costs for 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.

The proposed amendment regarding electric bicycles is consistent with the City of Mackinac Island e-bike ordinance.

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.

The proposed amendments do not require any additional actions by governmental units.

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 additional expenditure is imposed on a state or local government unit. There are no expenditures and no appropriation has been made.

Rural Impact

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

There will be no impact on rural areas.

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

There is no public or private interests in rural areas that will be affected by the proposed amendments.

Environmental Impact

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

The proposed amendment regarding electric bicycles has no impact on the environment.

The proposed amendment banning fireworks will help protect the environment from destruction by reducing risk of fires in the park.

Small Business Impact Statement

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

Since motor vehicles and electric bikes are banned by statute, the Commission cannot exempt small businesses from the proposed rules.

Exempting small business from the fireworks ban would defeat the purpose of the ban and be inconsistent with other state parks in Michigan.

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.

As explained above, exempting small businesses entirely from the electric bicycle and fireworks bans would be either unlawful or unfeasible. The rules do, however, accommodate small business that rent bicycles to visitors by permitting the businesses to purchase and rent class 1 electric bicycles if they certify that they will only rent them to visitors with disabilities that prevent the visitor from pedaling a bicycle without assistance.

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

No businesses on the Island sell fireworks, and the Commission is not aware of any bicycle rental businesses that rent electric bicycles. The Commission is aware, however, that some hospitality and construction business entities that operate on the Island have obtained electric bicycles for the use of their employees who are not disabled. If those employees without a disability operate a banned electric vehicle provided by their employer within Mackinac Island State Park, then the employee is subject to ticketing. The Commission plans to work with the City of Mackinac Island to further educate those businesses about the ban on electric bicycles.

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 impose reporting or record-keeping requirements.

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 impose 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 impose design or operational standards.

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

The proposed rules will not have a disproportionate impact on small businesses because of their 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 rules do not require small businesses to prepare a report.

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 proposed rules do not impose a cost of compliance on any small businesses.

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.

The Commission is not aware of any legal, consulting, or accounting services that small businesses would incur because of 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.

The Commission is not aware of any cost the rules would impose that would adversely affect small businesses' competition in the marketplace. The proposed rules will apply to all small businesses in the same way.

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 Commission does not have the discretion to not apply the electric bicycle ban to small businesses.

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

As explained above, Mackinac Island's reputation as being motor-vehicle-free is worth hundreds of millions of dollars. Allowing electric bicycles to be used by small businesses would essentially introduce motorcycles to the Island and put that reputation at significant risk.

Additionally, a fire sparked by fireworks could decimate the delicate ecosystems in Mackinac Island State Park, which would significantly harm the public interest.

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

The proposed rules have been discussed repeatedly in public meetings both with the Commission and with the elected leaders of the City of Mackinac Island, many of whom are involved in running small businesses on the Island.

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

The Commission is not aware of any small business that has specifically played a role in the development of the rules.

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 Commission does not believe the proposed rules will impose 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.

Businesses on the Island will all benefit from the protection of the Island's international reputation as a vehicle-free place, and the protection of the Island's natural resources. No businesses or groups will bear a cost under the proposed amendments to the rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The Commission does not believe the proposed rules will impose compliance costs.

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 Commission does not believe the proposed rules will impose compliance costs.

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

The ban on fireworks will not affect individuals except for people who want to light fireworks in Mackinac Island State Park. The ban on electric bicycles will not affect individuals except for people who want to use prohibited electric bicycles in Mackinac Island State Park.

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

The proposed rules do not impact individuals in any significant way.

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

The Commission is not aware of a way the proposed rules would directly reduce existing costs.

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 proposed rules will help protect the natural and historic environment in Mackinac Island State Park, thereby helping the individuals and businesses that derive economic benefits from those resources.

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

The proposed rules will help safeguard the unique economy on Mackinac Island.

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 Commission is not aware of any individuals or businesses that will be disproportionately affected by the proposed rules.

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 Commission relied on the collective experience of its staff who have long lived and worked on Mackinac Island, along with information from staff and officials with the City of Mackinac Island.

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.

The Commission completed this form using information from its staff and also information from the staff and officials with the City of Mackinac Island.

Alternative to Regulation

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

The Commission is not aware of any reasonable alternative to the proposed rules that could both satisfy the requirements of Michigan law and achieve similar ends.

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

The Commission does not believe there are any reasonable alternatives to the rules, so there are no statutory amendments that would be necessary.

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 Commission is not aware of any reasonable alternative to the proposed rules that could both satisfy the requirements of Michigan law, achieve similar ends, and be implemented as a market-based mechanism.

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.

Regarding electric bicycles, as explained above, the proposed rules are required by law. The Commission did not discuss any significant alternative.

Regarding the banning of fireworks, the only other alternative would be to not ban fireworks, which would be inconsistent with all other Michigan state parks and state park rules in adjoining states.

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.

Residents of Mackinac Island and people traveling to the Island should be aware that class 2 and class 3 electric bicycles are banned in Mackinac Island State Park, and people could be ticketed if they use a banned electric bicycle. Class 1 electric bicycles are also banned. But persons with a physical impairment that substantially limits the ability of the person to pedal a bicycle can use a class 1 electric bicycle within Mackinac Island State Park.

Residents and visitors should also be aware that fireworks are banned within Mackinac Island State Park.

These instructions are included in the rules, though some ferry operators also post signs at their docks on the mainland indicating that the City of Mackinac Island does not allow electric bikes except for those who are disabled.