

Michigan Office of Administrative Hearings and Rules

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**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Health and Human Services

Division/Bureau/Office:

Population Health and Community Services

Name of person completing this form:

Mary Brennan

Phone number of person completing this form:

517-284-4850

E-mail of person completing this form:

BrennanM@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Mary Brennan

2. Rule Set Information

MOAHR assigned rule set number:

2019-107 HS

Title of proposed rule set:

Protection of Youth from Nicotine Product Addiction

3. Purpose for the proposed rules and background:

Agency Report to JCAR-Page 2

These rules are to be promulgated by the Department of Health and Human Services to address a recent and staggering increase in youth usage of vapor products. On August 30, 2019, relying in part upon the declaration of youth usage of e-cigarettes as an epidemic by the U.S. Surgeon General, the MDHHS issued a finding of emergency related to youth usage of vapor products. Because this is a public health threat directly affecting youth in Michigan, the Department seeks to address this crisis by promulgating permanent rules to safeguard the public health pursuant to its authority under MCL 333.2226(d).

These rules will prohibit the selling, offering for sale, giving, transporting, or otherwise distributing of flavored nicotine vapor products. The rules will also prohibit possessing these products with the intent to sell. The rules will also prohibit the use of fraudulent or misleading terms or statements to sell or distribute vapor products. Lastly, the rules will limit access to products that are more appealing to youth through specific advertisement restrictions of vapor products. The Department anticipates that it may act via these rules to restrict the sale and advertisement of other nicotine products.

By prohibiting the retail sale of flavored products, less product is available on the market, and the products that are available are substantially less appealing to youth. This is anticipated to decrease youth use of vapor products. Reducing exposure to advertising related to vapor products can help to reduce youth initiation and continued use of vapor products. By restricting the advertising of these products, Michigan will curb youth exposure to vapor product advertisements specifically designed to pull them into nicotine addiction at an early age.

The rules will also protect adults by, among other things, ensuring that to the extent that the products used by adults are on the market they are proportionately advertised and legally sold. The rules will also exclude from restriction smoking cessation products approved by the Food and Drug Administration. Finally, the rules will protect adults by restricting use of misleading or fraudulent terms in advertising for vapor products. The Department will continue to work with its public health partners to address nicotine use and provide resources for individuals and their healthcare providers to enable them to quit using nicotine products.

4. Summary of proposed rules:

These rules will prohibit the selling, offering for sale, giving, transporting, or otherwise distributing of flavored nicotine vapor products. The rules will also prohibit possessing these products with the intent to sell. The rules will also prohibit the use of fraudulent or misleading terms or statements to sell or distribute vapor products. Lastly, the rules will limit access to products that are more appealing to youth through specific advertisement restrictions of vapor products. The Department anticipates that it may act via these rules to restrict the sale and advertisement of other nicotine products.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

Oakland Press, 9/16/2020; Marquette Mining Journal, 9/1/2020; Battle Creek Enquirer, 9/14/22

6. Date of publication of rules and notice of public hearing in Michigan Register:

10/15/2020

7. Date, time, and location of public hearing:

10/20/2020 09:00 AM at Via Microsoft Teams - Link: <https://tinyurl.com/y4av6m25> , Phone: 1-248-509-0316 - United States, Pontiac (Toll), Conference ID: 427 286 50#

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=93>

9. List of the name and title of agency representative(s) attending public hearing:

Akia Burnett, manager in the Tobacco Prevention and Control Program; Elaine Lyon. Consultant for Tobacco Prevention and Control Program; Carolyn Chaudbury, Consultant, Tobacco Prevention and Control Program.

10. Persons submitting comments of support:

See Attachment

11. Persons submitting comments of opposition:

See Attachment

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1					

13. Date report completed:

6/18/2021