

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:

Health and Human Services

Bureau name:

Policy and Legislative

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2021-42 HS

Title of proposed rule set:

Schedule of Monetary Civil Penalties for Violations of MDHHS Orders and 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 rules promulgate a schedule of monetary civil penalties applicable to violations of: (1) Michigan's Public Health Code; (2) rules promulgated under the Code; and (3) orders issued under the code. There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

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

No. Under MCL 333.2262(1), MDHHS may promulgate rules adopting a schedule of monetary civil penalties. There is no applicable federal mandate.

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. There is no applicable federal standard.

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

There are no standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

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

There are no standards in similarly situated states, as such there is no deviation.

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

Under MCL 333.2261, violations of Michigan’s Public Health Code and rules or orders of MDHHS constitute misdemeanors punishable by imprisonment of not more than 6 months, a fine of not more than \$200.00, or both. The proposed rules establish a schedule of monetary civil penalties for the same violations.

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.

MCL 333.2261 establishes a criminal penalty, whereas the proposed rule establishes monetary civil penalties. Thus, while both MCL 333.2261 and the proposed rules may pertain to the same conduct, the enforcement mechanism is distinct (i.e., a criminal charge and sentence v. a civil citation and monetary penalty). Such overlap between criminal/civil enforcement is common and requires no coordination. Moreover, criminal penalties are assessed through the criminal justice system—not by MDHHS. Thus, without a schedule of monetary civil penalties, MDHHS’s ability to enforce Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code is unduly limited.

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 to these proposed rules.

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.

There is no applicable federal standard; therefore, the proposed rules are not more stringent.

Purpose and Objectives of the Rule(s)

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

The proposed rules are designed to deter and provide a means to punish violations of Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code. At present, criminal charges are rarely brought for such violations; therefore, such violations generally go unpunished.

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

It is anticipated that a civil enforcement system—i.e., assessing a monetary civil penalty via the schedule promulgated by the proposed rule—would be easier to administer. As such, Michigan’s Public Health Code, rules promulgated under the code, and orders issued under the code would be more likely to be enforced, and violations therefore would be less likely.

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

Currently, individuals and entities violate Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code without facing any monetary civil ramifications. It is desired that those same individuals and entities who engage in such violations will be subject to monetary civil penalties to both deter and penalize violations.

C. What is the desired outcome?

The desired outcome is increased compliance with Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code.

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.

Violations of Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code cause significant harm to the state and its citizens. This includes further spread of communicable disease, environmental harms, etc.—all of which endanger the public health, safety, and welfare. While the Code itself provides for criminal penalties for such violations, individuals and entities have not been fully deterred from committing such violations by the criminal penalties. These undeterred violations will likely continue in the absence of the proposed rules, which establish a schedule of monetary civil penalties. The proposed rule serves as further deterrence and punishment for engaging in such violations, over and above the criminal penalties.

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

At present, there is no schedule of monetary civil penalties applicable to violations of Michigan's Public Health Code, rules promulgated under the Code, or orders issued under the Code. Consequently, MDHHS is unable to assess such penalties for violations. The proposed rules are necessary to implement such a schedule to allow MDHHS to impose monetary civil penalties for violations.

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 provide a monetary civil penalty for violations of Michigan's Public Health Code, rules promulgated under the Code, and orders issued under the Code. They therefore deter individuals and entities from committing violations. The violations deterred could range from violations of communicable disease statutes and rules, environmental statutes and rules, etc. By deterring these violations, the proposed rules protect the health, safety, and welfare of Michigan citizens. Additionally, the proposed rules merely establish a schedule of monetary civil penalties for activities already identified as violations, and therefore do not increase any burden on individuals related to compliance with the regulatory environment in Michigan. Individuals and entities were always required to comply, the proposed rules simply provide an enforcement mechanism.

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

This is a new rule set. The proposed rules are necessary.

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).

The proposed rules would have minimal, if any, fiscal impact on MDHHS.

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 additional expenditures are associated with the proposed rules. As such, no agency appropriation has been made and no funding source has been provided for expenditures associate 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.

At present, there is no schedule of monetary civil penalties applicable to violations of Michigan's Public Health Code, rules promulgated under the Code, or orders issued under the Code. Consequently, MDHHS is unable to assess such penalties for violations. The proposed rules are necessary to implement such a schedule to allow MDHHS to impose monetary civil penalties for violations, which will both deter and punish violations. The proposed rules do not place additional burdens on individuals or entities. Individuals and entities were always required to comply with Michigan's Public Health Code, rules promulgated under the code, and orders issued under the code; the proposed rules simply provide an enforcement mechanism.

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

The proposed rules do not place additional burdens on individuals or entities. Individuals and entities were always required to comply with Michigan's Public Health Code, rules promulgated under the code, and orders issued under the code; the proposed rules simply provide an enforcement mechanism. Consequently, the proposed rules are still needed and reasonable compared to the burdens.

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 imposition of monetary civil penalties under the schedule promulgated by the proposed rule will increase revenue to the state in the amount of \$1,000 for each cited violation. There are no estimated decreases in revenues, cost increases, or cost reductions to state or local governmental units as a result of the proposed rule. The proposed rule merely implements a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code.

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

No program, service, duty, or responsibility is imposed upon a county, town, village, or school district by the proposed 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.

Governmental units need not take any action to be in compliance with the proposed rules.

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 expenditures are associated with the proposed rules. As such, no appropriation to state or local governmental units has been made and a funding source has not been provided for any additional expenditures associated with the proposed rules.

Rural Impact

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

The proposed rules will benefit rural areas, as they will increase compliance with provisions meant to protect the health, safety, and welfare of Michigan citizens. Otherwise, the proposed rules will have minimal impact on rural areas. The proposed rules implement a schedule of monetary civil penalties for violations of Michigan's Public Health Code, rules promulgated under the Code, and orders issued under the Code. Individuals and entities in rural areas are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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

The proposed rules will benefit all public and private interest in rural areas, as they will increase compliance with provisions meant to protect the health, safety, and welfare of Michigan citizens. Otherwise, the proposed rules will not affect public or private interests in rural areas. The proposed rules implement a schedule of monetary civil penalties for violations of Michigan's Public Health Code, rules promulgated under the Code, and orders issued under the Code. Individuals and entities in rural areas are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

Environmental Impact

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

To the extent the proposed rules deter individuals and entities from violating provisions of Michigan's Public Health Code, rules promulgated under the Code, and orders issued under the Code related to environmental health, the proposed rules will have a positive impact on the environment. The proposed rules will benefit the environment, as they will increase compliance with provisions meant to protect the health, safety, and welfare of Michigan citizens—including the provisions related to environmental health.

Small Business Impact Statement

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

MDHHS did not consider exempting small businesses from the proposed rules. The proposed rules implement a schedule of monetary civil penalties for violations of Michigan's Public Health Code, rules promulgated under the Code, and orders issued under the Code. Small businesses are governed by these provisions, and therefore should be subjected to the same penalties as individuals and other entities if they fail to comply.

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.

MCL 24.240(1)(a-d) does not apply to the proposed rules because the proposed rules will not have a disproportionate impact on small businesses because of the size of those businesses.

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

MCL 24.240(1)(a) does not apply to the proposed rules because the proposed rules will not have a disproportionate impact on small businesses because of the size of those 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.

MCL 24.240(1)(b) does not apply to the proposed rules because the proposed rules will not have a disproportionate impact on small businesses because of the size of those 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.

MCL 24.240(1)(c) does not apply to the proposed rules because the proposed rules will not have a disproportionate impact on small businesses because of the size of those businesses.

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

MCL 24.240(1)(d) does not apply to the proposed rules because the proposed rules will not have a disproportionate impact on small businesses because of the size of those businesses.

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.

There is no report that small businesses must prepare to comply with the proposed rules.

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 is no cost of compliance for small businesses. The proposed rule merely implements a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Small businesses are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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.

There is no cost of compliance for small businesses. The proposed rule merely implements a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Small businesses are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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

There is no cost of compliance for small businesses. The proposed rule merely implements a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Small businesses are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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 standards for compliance for small businesses. The proposed rule merely implements a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Small businesses are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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

There are no standards for compliance for small businesses. The proposed rule merely implements a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Small businesses are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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

MDHHS has not involved small businesses in the development of the proposed rules.

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

MDHHS has not involved small businesses in the development of the proposed 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.

There is no statewide compliance cost on businesses or groups. The proposed rules merely implement a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Businesses and groups are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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

Businesses or groups who violate Michigan's Public Health Code, rules promulgated under the code, and orders issued under the Code may be directly affected by the proposed rules, in that they will be subject to the schedule of monetary civil penalties as a result of their violation. No business or group will bear the cost of, or directly benefit from the proposed 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.

No additional costs will be imposed on businesses and other groups as a result of these proposed rules. The proposed rules merely implement a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Businesses and groups are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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.

There is no statewide compliance cost. The proposed rules merely implement a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Individuals are already required to comply with these provisions; the proposed rules simply provide an enforcement mechanism.

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

Individuals who violate Michigan's Public Health Code, rules promulgated under the code, and orders issued under the Code may be affected by the proposed rules, in that they will be subject to the schedule of monetary civil penalties as a result of their violation.

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

Individuals who violate Michigan’s Public Health Code, rules promulgated under the code, and orders issued under the Code may be assessed a monetary civil penalty of \$1,000.00 for each separate violation and for every calendar day that each separate violation continues. The proposed rules will increase an individual’s compliance with Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code. The proposed rules provide a schedule of monetary civil penalties for violations of the Code, rules promulgated under the Code, and orders issued under the Code. They therefore deter individuals and entities from committing violations.

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

There are no cost reductions to businesses, individuals, groups of individuals, or governmental units 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 proposed rules will increase compliance with Michigan’s Public Health Code, rules promulgated under the Code, and orders issued under the Code. The proposed rules provide a schedule of monetary civil penalties for violations of the Code, rules promulgated under the Code, and orders issued under the Code. They therefore deter individuals and entities from committing violations. The violations deterred could range from violations of communicable disease statutes and rules, environmental statutes and rules, etc. By deterring these violations, the proposed rules protect the health, safety, and welfare of Michigan citizens. MDHHS assumes that increased compliance with Michigan’s Public Health Code, rules promulgated under the code, and orders issued under the Code results in a healthier population overall.

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

The proposed rules will not impact business growth and job creation or elimination in Michigan.

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.

No individuals or businesses will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, 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.

MDHHS considered whether to establish a monetary civil penalty of less than \$1,000.00 for each violation of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. MCL 333.2262 (1), which authorizes MDHHS to adopt a schedule of monetary civil penalties, not to exceed \$1,000.000 for each violation or day that a violation continues, was enacted in 1978. Due to inflation, \$1,000.00 in 1978 is equivalent to approximately \$4,180.00 in December 2021. (CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm.) Consequently, it is necessary to set the monetary civil penalty at \$1,000.00 to discourage violations of the Code, rules promulgated under the Code, and orders issued under the Code and to account for inflation. In addition to the cost analysis and the discussion of an amount to dissuade continued violations of the Public Health Code, subject matter experts within the department, statistical review of criminal cases filed (or not) for violations of the Code.

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 arrived at given the analysis above of what amount of the fine would act as a deterrent for those who violate the Public Health Code and would likely dissuade individuals from reoccurring behavior once fined. In the absence of criminal penalties, individual behavior will not change unless another alternative dissuades violation of the Public Health Code. Internal subject matter experts at DHHS, both staff and contracted staff have had many discussions regarding these proposed rules as an alternative to keep Michigan citizens safe and healthy.

Alternative to Regulation

35. 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 that would achieve the same or similar goals.

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

As there are no reasonable alternatives, no statutory amendments are necessary to achieve such alternatives.

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.

It is not feasible to establish a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. The proposed rules implement a schedule of monetary civil penalties for violations of Michigan's Public Health Code, rules promulgated under the Code, and orders issued under the Code, thus providing an enforcement mechanism for such violations. Under the Code, the private market is unable to enforce such violations.

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.

There were no alternatives to the proposed rules. At present, there is no schedule of monetary civil penalties applicable to violations of Michigan's Public Health Code, rules promulgated under the Code, or orders issued under the Code. Consequently, MDHHS is unable to assess such penalties for violations. Without promulgating the proposed rule, MDHHS would remain in the same situation. The proposed rules therefore are necessary to implement such a schedule to allow MDHHS to impose monetary civil penalties for violations, which will both deter and punish violations.

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 instructions regarding the method of complying with the rules. The proposed rules merely implement a schedule of monetary civil penalties applicable to activities already designated as violations of the Michigan Public Health Code, rules promulgated under the Code, and orders issued under the Code. Individuals and entities are already required to comply with these provisions and are aware of how to comply; the proposed rules simply provide an enforcement mechanism.