

# Michigan Office of Administrative Hearings and Rules

611 West Ottawa Street; 2nd Floor, Ottawa Building

Lansing, MI 48933

Phone: (517) 335-8658 FAX: (517) 335-9512

## REQUEST FOR RULEMAKING (RFR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate rules must electronically file a RFR with the Michigan Office of Administrative Hearings and Rules (MOAHR) before initiating any changes or additions to the rules. Submit copy to the MOAHR at [o'berrvd@michigan.gov](mailto:o'berrvd@michigan.gov).

### 1. Agency Information

Agency name:	Treasury
Division/Bureau/Office:	Bureau of Tax Policy
Name, title, phone number, and e-mail of person completing this form:	Margaret Patterson, Administrative Law Specialist (517) 335-7478 <a href="mailto:Treas_Tax_Policy@michigan.gov">Treas_Tax_Policy@michigan.gov</a> ___

### 2. Rule Set Information

Title of proposed rule set:	Taxation of Marihuana Sales Rules
Rule number(s) or range of numbers:	R 205.150 to 205.152
Included in agency's annual regulatory plan as rule to be processed in current year?	No

### 3. Estimated timetable for completion, or statutory deadline, if applicable:

By October 1, 2019 or as soon as full promulgation process allows.

### 4. Describe the general purpose of these rules, including any problem(s) the changes are intended to address:

On November 6, 2018, Michigan voters approved a ballot initiative legalizing the recreational use and possession of marihuana for adults 21 years of age and older and enacting an excise tax on retail marihuana sales. The resulting legislation is known as the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 through MCL 333.27967. The 10 percent excise tax is levied in addition to any other applicable state taxes, including the existing 6 percent sales tax, and will be administered by the Department of Treasury.

Specifically, the MRTMA provides that the excise tax is imposed "at the rate of 10% of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment." The MRTMA further provides that taxable marihuana "may not be bundled in a single transaction with a product or service" that is not subject to the 10 percent excise tax.

The new Taxation of Marihuana Sales Rules will define the term "sales price"; and clarify the tax result of retail marihuana sales made in violation of the no-bundling provision.

### 5. Cite the specific rule promulgation authority (i.e. agency director, commission, board, etc., listing all applicable statutory references. If the rule(s) are mandated by any applicable constitutional or statutory provision, please explain.

MCL 333.27963(3) of the MRTMA directs that "The department of treasury shall administer the taxes imposed under this act and may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 through MCL 24.328, that prescribe a method and manner for payment of the tax to ensure proper tax collection under this act."

--

**6. Describe the extent to which the rule(s) conflict with, duplicate, or exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level. Include applicable public act and statutory references.**

The Michigan Legislature has designated the Department of Treasury as the “agency of this state responsible for the collection of taxes.” MCL 205.1. There are no other compliance requirements at the state, regional, or federal level regulating the taxation of the retail sale of marihuana for recreational or medical use.
---

**7. Is the subject matter of the rule(s) currently contained in any guideline, manual, handbook, instructional bulletin, form with instructions, or operational memo?**

Certain of the subject matter of the new rules is contained in Revenue Administrative Bulletin 2018-2 titled “Marihuana Provisioning Center Tax and Sales and Use Tax Treatment of Marihuana,” last updated on April 22, 2019, and in a notice captioned “ Notice to Taxpayers Regarding the Michigan Regulation and Taxation of Marihuana Act,” issued on January 29, 2019.
--

**8. Explain whether the rule(s) will be promulgated under Sections 44 or 48 of the APA or the full rulemaking process:**

The new rules will be promulgated under the full rulemaking process.
--

**9. Do the rule(s) incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5? If yes, explain.**

The new rules do not involve an Advisory Rules Committee.
---

**10. Is there an applicable decision record as defined in Section 3(6) and required by Section 39(2) of the APA? If so, please attach the decision record.**

There is no decision record applicable to the new rules.
--

**11. Reviewed by the following Departmental Regulatory Affairs Officer:**

Margaret L Patterson
----------------------

-----  
↓ To be completed by the MOAHR ↓

Date RFR received:5-20-2019
-----------------------------

**Based on the information in this RFR, the MOAHR concludes that there are sufficient policy and legal bases for approving the RFR.**

MOAHR assigned rule set number:	<b>2019-052 TY</b>
Date of approval:	<b>5/22/19</b>

**Based on the information in this RFR, the MOAHR is not approving the RFR at this time.**

Date of disapproval:	
Explanation:	