

**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:**

State Police

**Bureau name:**

Forensic Science Division

**Name of person filling out RIS:**

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**Rule Set Information:**

**ARD assigned rule set number:**

2022-34 SP

**Title of proposed rule set:**

Tests for Breath Alcohol

**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 National Highway Traffic Safety Administration establishes evidential breath alcohol device specifications and requirements. Those requirements are adopted by these rules.

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

These rules are required by state law. MCL 257.625a.

**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 rules do not exceed the federal standard.

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

See Illinois IL ST 625 5/11-501.2; IL ST 625 5/11-501.4; 625 5/11-501.5; and 20 Illinois Code Chapter 2, sec 1286

Illinois Statute 625 ILCS 5/11-501.2 requires that breath and blood alcohol analysis is done pursuant to standards promulgated by the Illinois State Police. Those standards are codified in 20 Illinois Administrative Code 1286. The Illinois rules include testing blood and breath samples, while the Michigan rules deal only with breath samples. The Illinois rule set, like Michigan's require training, certification, and calibration of the devices on a routine basis.

Indiana IN ST 9-30-6-1 through 9-30-6-8 and Indiana Administrative Regulations Title 260 Articles 1 – 2.5

Section IC 9-30-6-5 authorizes the Indiana State department of toxicology to adopt rules for the standards and regulations in selection, training, certification, and operation of evidential breath alcohol devices. Those rules are codified in Title 260 Art. 1 – 2.5. Art. 2.5 is the most similar rule set to those at issue and require training, certification, and calibration standards in the use and reporting of evidential breath instruments.

See Wisconsin WI ST 343.305; Wisconsin Admin Code. 311.01 – 311-11.

Wisconsin's admin code, like Michigan's set standards and requirements for operators and instruments. Instruments must be calibrated and checked for accuracy periodically, but not more than 120 days apart. The Wisconsin standard is for two digits beyond the decimal. These proposed rules take Michigan to 3 digits beyond the decimal which increases reliability and integrity of the test and result.

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

Michigan's rules are in line with Illinois and Indiana. Michigan's ruleset has a higher degree of certainty than Wisconsin's. With the installation of the new instruments, Michigan will be getting results to the third decimal. Wisconsin results are in line with the current rules which is two decimals. A 3-digit decimal result was a response to requests received from members of the defense bar; this result increases reliability and integrity of the test and the result at no additional cost.

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

There are no laws, rules or other legal requirements that duplicate, overlap or conflict with these proposed rules.

**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 relevant federal rules are found in the federal register. These rules provide standards and list of complaint devices. Because the federal register does not address the specific subject matter of these rules – i.e., testing persons, calibrating and maintaining devices, etc. no coordination was necessary. Rather, the rules were amended to accommodate the new features and technology that come with the new instrument. The new instrument is on the list of compliant devices. State law relevant to these rules only apply to the department's authority to promulgate such rules. There are no other state laws or local laws that require coordination.

**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 federal government has not mandated the creation of these 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.**

The proposed rules are not more stringent than the federal standards.

## **Purpose and Objectives of the Rule(s)**

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

The amended rules will require that instruments be inspected at least two times every calendar year. The new instruments analyze a known ethanol standard with each subject test. This per subject testing improves quality control and meets the recommendations in published industry-based journals for evidential breath testing.

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

The amended rules require that evidential breath instruments be inspected at least two times in a calendar year.

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

The current required inspection is every 120 days. The amended rules require two inspections in a calendar year.

While the inspection period is longer, the new devices will analyze a known ethanol standard with each subject test.

This addition to subject testing improves quality control and meets the recommended industry standard.

**C. What is the desired outcome?**

The desired outcome is a more reliable breath alcohol program, more accurate records of the calibration, and as a result of better calibration, more accurate and more reliable test results that will benefit the criminal justice system.

**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 department has purchased a different device with more advanced technology and reporting capabilities. As a result, the rules must be amended to accommodate the new instruments and their features. Without these amendments, the new devices cannot be placed in service.

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

The department has purchased a different device with more advanced technology and reporting capabilities. As a result, the rules must be amended to accommodate the new instruments and their features. Without these amendments, the new devices cannot be used.

**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 rules protect the health safety and welfare of Michigan citizens by assisting in the enforcement of laws designed to prevent drunk driving. These amended rules allow the use of a more advanced device that will offer additional reporting capabilities in the detection, enforcement, and prevention of drunk driving.

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

R 325.2654 Equipment repair and service has been rescinded. The rule moved to R 325.2659 to add clarity to the rules.

## **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).**

An appropriation has been made for the purchase and installation of the new instruments. Because the department is already tasked with the maintenance of the instruments, there should be no additional fiscal impact on the department.

**11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.**

An appropriation has been made for the purchase of new evidential breath alcohol test instruments.

**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 proposed amendments to these rules impose no additional burdens.

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

There are no additional burdens as a result of these amendments.

## **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.**

These rules will not impact revenue to 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.**

There are no duties, programs, services, or responsibilities, imposed on any city, county, town, village, or school district by 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.**

Compared to the current rules, local law enforcement agencies that have a department instrument will have no additional responsibilities under the amended rules. Agency personnel who operate the new instruments will need to be trained and certified. Training is offered free of charge.

**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.**

An appropriation for the purchase of the new devices has been made.

## **Rural Impact**

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

These rules will have no additional impact on rural areas.

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

There are no public or private interests in rural areas that will be affected by the rules.

## **Environmental Impact**

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

The proposed rules do not have any impact on the environment.

## **Small Business Impact Statement**

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

These rules will have no impact on small businesses, so no exemption was considered.

**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.**

There will be no impact on small business with implementation of these amended rules.

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

No small businesses will be affected by the proposed rules.

**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.**

There are no reporting requirements or timetables for small business under these rules.

**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.**

There are no reporting or compliance requirements for small businesses.

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

The department examined current trends in breath alcohol testing and compared current practices in Michigan to what is recommended by national organizations and published in scientific literature. As a result of this analysis, minor amendments to the rules are necessary to accommodate the advancement in technology and use of the new instruments.

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

The rules will have no impact on small businesses.

**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 are no reporting requirements for small businesses in these 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 compliance costs for 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.**

There will be no additional costs for legal, consulting, or accounting services as a result of the rules.

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

There will be no costs or economic harm for small businesses as a result of the rules.

**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 rules are not enforceable against small businesses.

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

The rules do not address standards for small businesses.

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

The agency did not involve small businesses in the development of the rules.

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

No small businesses were involved.

**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 are no expected compliance costs based on these amended rules.

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

The criminal justice system (law enforcement, prosecutors, and defense attorneys) will benefit the most from these changes by having additional information as part of each evidential breath test.

**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 are anticipated.

**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.**

Law enforcement personnel with certifications for the instrument currently in use will have to attend additional training to be certified to use the new instrument. Historically, the Michigan State Police has offered this training at no cost and it is expected that the MSP will continue to offer it at no cost.

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

Law enforcement personnel certified to use the current instrument will be required to attend additional training to be certified on the new instrument. The exact number of personnel cannot be determined as some personnel currently certified may not be certified on the new device based on their role and responsibilities in their local agency.

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

No significant impact is expected to any law enforcement personnel as a result of these new rules or the use of the new instrument. Each will still be conducting breath tests on individuals suspected of an alcohol related offense; only the instrument will change, and these rules need to be amended to accommodate that change.

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

No cost reductions are expected.

**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.**

These new rules will allow the department to deploy the new breath alcohol test instrument across the state. The new instrument will provide additional data to the criminal justice system in alcohol related cases.

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

These rules should have no impact on business growth or job creation/elimination.

**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.**

There are no businesses or individuals who will be disproportionately affected.

**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 agency did not rely on any sources or methodology in determining the impact of the proposed rules.

**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.**

Current practices within Michigan's breath alcohol testing program were compared with current practices in other states, as well as recommendations published in scientific literature. A number of areas were identified for improvement and these were incorporated into the new instrument and these amended rules.

## **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 MCL 257.625a. There is no alternative.

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

No alternative exists.

**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.**

Relying on a private market for breath chemical testing would yield varying results. There would be no uniform methodology to the training, education, certification, and verification of the instruments or the process. Additionally, in a private market system, rural, less populated areas would likely have fewer options for testing.

**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.**

MCL 257.625a requires the department to draft these rules to ensure uniform administration of breath alcohol testing throughout the state. No other alternatives were discussed as these rules were amended to accommodate the use of a new device.

**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.**

Local agencies will need to have operators certified in the use, calibration, and maintenance of the new devices.