

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:

State Police

Bureau name:

Criminal Justice Information System

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2019-142 SP

Title of proposed rule set:

Criminal Justice Information Systems

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 definition of "criminal justice information" in rule R 28.5101 conflicts with the federal definition of "criminal justice information." The state definition is overly broad to include all information collected by an agency.

Additionally, the rules do not apply to "criminal justice information." The federal definition only applies to and protects information received from federal systems.

The rules limit dissemination of all information obtained from "LEIN, AFIS, or other information systems" to approved agencies. Federal policy allows dissemination of select information to non-approved agencies.

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

The rules are required pursuant to MCL 28.214.

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.

Due to the fact the state maintains its own criminal justice information systems, the state is required to promulgate rules regarding access and dissemination (MCL 28.214). Many of the rules also pertain to record responsibility and data quality. While several rules are duplicates of federal policy and/or rule, these rules are necessary to provide guidance to agencies that access state systems but do not qualify for access to the federal systems, and because federal policy and regulation purposely leaves many decisions to the individual state.

The rules allow access by an “an agency authorized by statute,” and “and agency, entity, or person approved by the CSA/CSO for public safety purposes.” This allows access to the state systems and state information by agencies and entities that would not otherwise qualify for access to the federal system. This conflicts with federal policies and regulation (28 CFR Part 20) which limits system access to criminal justice agencies, and criminal history record access to criminal justice agencies for criminal justice purposes.

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

As a part of the rule drafting process, surveys were sent to the states of Illinois, Indiana, Minnesota, Ohio, and Wisconsin (the Great Lakes region). Four of the five states responded (Illinois did not respond). In comparison to the four states that responded, Michigan’s proposed rules are either in-line or less burdensome with respect to access to “criminal justice information systems” and “criminal justice information.”

For example, Michigan’s proposed rules are in-line with Indiana and Minnesota in that access to “criminal justice information” is not restricted to criminal justice purposes. Indiana, like Michigan’s proposed rules, allows limited access to “criminal justice information systems” and “criminal justice information” for certain non-criminal justice agencies for certain non-criminal justice purposes. Additionally, like Michigan’s proposed rules, Indiana allows a private citizen limited access to “criminal justice information” about him/herself. Conversely, Michigan’s proposed rules are less burdensome than those of Ohio and Wisconsin, as Ohio and Wisconsin do not allow access to “criminal justice information systems” and “criminal justice information” by non-criminal justice agencies for non-criminal justice purposes. Additionally, Ohio and Wisconsin do not allow a private citizen access to “criminal justice information” even in a limited basis, as Michigan’s proposed rules allow.

Michigan’s proposed rules do not exceed the standards of the comparison states.

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

The proposed rules do not exceed the standards of any similarly situated states.

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

There are no known laws, rules, or other legal requirements that overlap or conflict with the 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 rule set was compared to federal regulations of the same activity or subject matter. Due to the fact the state maintains its own criminal justice information systems, the state is required to promulgate rules regarding access and dissemination (MCL 28.214). Many of the rules also pertain to record responsibility and data quality. While several rules are duplicates of federal policy and/or rule, these rules are necessary to provide guidance to agencies that access state systems but do not qualify for access to the federal systems, and because federal policy and regulation purposely leaves many decisions to the individual state.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(8) is not applicable.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the 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 and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

Due to the fact the state maintains its own criminal justice information systems, the state is required to promulgate rules regarding access and dissemination (MCL 28.214). Many of the rules also pertain to record responsibility and data quality. While several rules are duplicates of federal policy and/or rule, these rules are necessary to provide guidance to agencies that access state systems but do not qualify for access to the federal systems, and because federal policy and regulation purposely leaves many decisions to the individual state.

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

The proposed rules achieve compliance with the federal standard, while also providing guidance to agencies that access state systems, but do not qualify for access to the federal systems.

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

The proposed rule changes will result in an immediate and daily clarification of the subject matter.

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

The proposed rule changes will bring the rule set and behavior in compliance with the federal standard.

C. What is the desired outcome?

The desired outcome is clarification, narrowing of scope, and compliance with the federal standard.

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 proposed rules achieve compliance with the federal standard, while also providing guidance to agencies that access state systems, but do not qualify for access to the federal systems.

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

The current definitions for “criminal justice information” and “criminal justice information systems” contained in R 28.5101 are too broad and create confusion in determining what systems and what information is subject to these rules. Additionally, the current rules were adopted in 2009 and do not take into account technological changes and changes to federal standards adopted since 2009.

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 purpose of the rule set is to govern the access, use, and dissemination of criminal justice information systems and criminal justice information. This information is accessed and used by criminal justice and public safety-related agencies in their public safety missions. The proposed rules achieve compliance with the federal standard, while also providing guidance to agencies that access state systems but do not qualify for access to the federal systems.

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

R 28.5404 can be rescinded.

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 due to the proposed changes. The department will not incur costs or savings due to the proposed changes.

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 not been established and there will be no impact due to the proposed changes.

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 department is required by the CJIS Policy Council Act to establish policy and promulgate governing access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement. Proposed rules are needed and reasonable compared to the burdens it places on individuals.

Updating the rules to be consistent with current behavior will reduce the current burden experienced user agencies.

Updating the rules to be consistent with the federal standard will result in federal compliance.

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

The department is required by the CJIS Policy Council Act to establish policy and promulgate governing access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement. Proposed rules are needed and reasonable compared to the burdens it places on individuals.

Updating the rules to be consistent with current behavior will reduce the current burden experienced user agencies. Updating the rules to be consistent with the federal standard will result in federal compliance.

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.

There is no identified increase or decrease in revenues to other state or local government units as a result of the proposed changes to the rule.

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

The proposed changes do not impose upon any city, county, town, village, or school district.

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 changes do not require any additional actions by governmental units to be in compliance.

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.

There are no additional expenditures associates with the proposed rules.

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

There is no identified impact on rural areas due to the proposed rule changes.

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

There is no identified impact on rural areas due to the proposed rule changes.

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

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

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

The agency did not consider exempting small businesses from the proposed rules.

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.

In general, small business are not considered by this rule set. Consistent with the federal standard, small businesses are allowed access to CJIS systems and information only when under contract with a criminal justice entity and when performing a criminal justice function for the contracting agency. This rule set accounts for this exception.

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

The impact on small businesses is not affected by the proposed rule set.

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 impact on small businesses is not affected by the proposed rule set.

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 impact on small businesses is not affected by the proposed rule set.

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

The impact on small businesses is not affected by the proposed rule set.

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

There is no disproportionate impact on small businesses by the proposed rule set.

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 increase the cost of compliance 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 are no proposed rules that will require a small business to incur legal, consulting, or accounting services.

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

The proposed rules do not increase the cost of compliance for small businesses. The impact on small businesses is not affected by the proposed rule set.

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 proposed rules do not exempt or set a lesser standard for compliance by small businesses.

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

Exempting or setting lesser standards of compliance for small businesses would result in non-compliance with the federal standard and may result in a breach of personally identifiable Information and criminal justice information.

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

Small businesses were not involved in the development of the proposed rules.

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

Small businesses were not involved in the development of the proposed rules.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There are no changes in compliance costs to businesses or groups.

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

The governmental public safety community will 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.

There are no additional costs as a result of the proposed rules.

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 are no costs for compliance as a result of the proposed rules.

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

Roughly 1400 public safety-related user agencies will be affected by the proposed rules.

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

The proposed rules provide clarification and limit the scope of the systems and information which are subject to the rule set.

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

The department does not foresee quantifiable cost reductions 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 provide clarification and limit the scope of the systems and information which are subject to the rule set.

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

The department does not foresee any impact to business growth and job creation due to the proposed rules.

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 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 as a result of 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 sources relied upon in compiling the regulatory impact statement are the Criminal Justice Information Systems (CJIS) Policy Council Act, 1974 PA 163, MCL 28.211-28.215, the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy, and Title 28 Chapter 1 Part 20 of the United States Code of Federal Regulation. There are no identified cost increases or decreases due to the proposed rule set.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

The proposed rules serve to provide clarity and limit the scope of the systems and information subject to the rule set. As such, there are no changes to access, dissemination, or technological requirements that would impact user agencies financially.

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

There are no alternatives to the proposed rules. The rules are required pursuant to MCL 28.214.

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

There are no alternatives to the proposed rules.

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.

There is no feasibility of establishing a regulatory program similar to the proposed rule set that would operate through private market-based mechanisms. There are no other states that utilize a private market-based system to regulate the access, use, and dissemination of criminal justice information systems.

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.

There were no significant alternatives considered or discussed during the rule set development.

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 additional instructions aside from the rule set regarding the method of complying with the rules.