(GIA) Green Industry Association

3/25/2026

Michigan Wholesale Marijuana Tax

APA Compliance Failure / Another Argument Against 24%

Two Ways Law Is Created

1. Legislation / Ballot Initiative

2. Administrative Rulemaking (APA)

      a. Agencies may create rules only through the Administrative Procedures Act (APA)

      b. Requirements:

            i. Must not conflict with statute

            ii. Must fill administrative gaps

            iii. Must include meaningful standards + safeguards to prevent arbitrary action

            iv. Must go through:

                  1. Public notice

                  2. Public comment

                  3. Legislative oversight (JCAR review)

Core Issue: Treasury Bypassed the APA

The Michigan Legislature delegated Treasury authority to define the "average marijuana wholesale price."

However, the statute provides no meaningful standards for:

- Creation of product categories
- Number or scope of categories
- Legal definitions of those categories
- Methodology or data required to calculate wholesale prices

This creates unbounded discretion, raising serious delegation concerns.

Even If Delegation Were Valid — APA Was Still Required

Even assuming the delegation survives legal scrutiny, Treasury actions only carry the force of law if promulgated through the APA.
Instead, Treasury:

- Created taxable product categories
- Established a pricing methodology
- Set statewide wholesale averages

All via bulletin (RAB) — not through APA rulemaking.
A bulletin is not law and does not satisfy APA requirements.

No Evidentiary Basis for the Tax Methodology

FOIA responses confirm:

- Treasury relied on two outdated blog posts (Cannabis Benchmarks)
- Based on limited flower pricing data only
- No product-specific margin analysis

Cannabis Benchmarks stated:
"We wouldn't recommend using that blog post to set an entire state's tax program."
Treasury further admitted:
"Treasury does not maintain internal datasets, raw data, or independent analyses establishing a 50% retail markup."
The 50% markup assumption is unsupported and arbitrary

No Legal Definitions of Taxable Classes

Treasury relies on the CRA "Best Practices Guide" for product category definitions.
Problems:

- Explicitly states it is not for legal use
- No statutory or APA-backed definitions exist
- Used as the basis for tax classification

FOIA findings:

- No identified author
- No revision history

- Maintained as a "working document"
- Prior versions do not exist

The guide was modified in February 2026 (after tax implementation), changing category descriptions with:
- No formal process
- No record of who made the changes

Legal Risk

- Taxable classes are undefined in law
- Definitions can be changed at any time without rulemaking
- Tax liability is based on:
  - o Non-binding guidance
  - o Arbitrary assumptions
  - o Unverified methodology

This structure is unique and unprecedented in Michigan taxation

Bottom Line

Michigan Treasury:
- Exercised legislative power without standards
- Imposed binding tax policy without APA rulemaking
- Relied on non-legal, mutable guidance documents
- Used unsupported assumptions with no internal data

Result:

The wholesale marijuana tax framework was implemented outside the APA, making its legal foundation highly vulnerable to challenge.