

Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

Agency name:	Licensing and Regulatory Affairs		
Division/Bureau/Office:	Public Service Commission		
Name, title, phone number, and e-mail of person completing this form:	Jana Bachman Administrative Law Specialist (517) 284-8088		
Name of Departmental Regulatory Affairs Officer reviewing this form:	Liz Arasim Department of Licensing and Regulatory Affairs		

2. Rule Set Information

ORR assigned rule set number:	2018-042 LR
Title of proposed rule set:	Preservation of Records of Electric, Gas, and Steam Utilities

PART 2: KEY SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

MCL 24.232 (8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
- (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
- (a) 0-9 full-time employees.
 - (b) 10-49 full-time employees.
 - (c) 50-249 full-time employees.
- (4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
- (5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Proposed rules are consistent with Federal Energy Regulatory Commission (FERC) rules.

A. Are these rule(s) required by state law or federal mandate?

No. The rules address the need for Michigan’s regulated utilities to retain certain business records for regulatory actions or proceedings, such as audits, investigations, and rate cases, conducted by the Commission.

B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

Michigan’s rules do not exceed a federal standard although minor timeframe retention differences do exist. The benefit of the deviation (if timeframe differences are considered a deviation) is that the regulated utility and the Commission will be confident that needed records will be available for the Commission to carry out its regulatory duties. No additional costs are anticipated.

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

- The rules were compared to four states: Ohio, Indiana, Illinois, and Massachusetts. Indiana’s preservation of records statutes, 170 IAC 10-2-1, 10-2-2, and 10-2-3, adopt the FERC standards.
- Ohio’s, Illinois’s, and Massachusetts’ standards are similar to Michigan’s current rules. Other than Indiana, each state has enacted administrative rules that require records to be protected from damage that may occur from heat, humidity, dryness, fire, floods, lack of ventilation, etc. These are consistent with Michigan’s current rules. The Commission is proposing to change these requirements somewhat by eliminating that utilities must select a physical storage space that safeguards records from unnecessary exposure to excessive humidity, dryness, or lack of ventilation; and to add that the utility must operate a backup system for records that are electronically preserved. R 460.2503.
- Each of the three states (other than Indiana) have promulgated administrative rules to require regulated utility companies to designate a person or persons to oversee the company’s preservation of records. This is consistent with Michigan’s current rule.
- Each of the three states’ administrative rules permit destruction of records through any appropriate means. This is consistent with Michigan’s current rule.
- Each of the three states have rules for the preservation of paper and card stock, magnetic tape, punched cards, microforms, and in the case of Massachusetts, computer discs. The Commission seeks to rescind its applicable rules because these methods of information storage are considered to be obsolete. The Commission believes that these and other proposed rule changes will bring clarity to the Commission’s record retention instructions and regulations.
- The regulations for preservation of records for utilities for the State of Indiana are found at www.in.gov/legislative/iac/title170.html. Article 10. The Ohio code is found at <http://codes.ohio.gov/oac/4901:1-9-06>; for Illinois at [ftp://www.ilga.gov/JCAR/AdminCode/083/083parts.html](http://www.ilga.gov/JCAR/AdminCode/083/083parts.html) (Part 420, Part 510); for Massachusetts at 220 CMR 75.00. The proposed schedule for Michigan is contained in the copy of the proposed rules.
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A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed the standards in the comparison states although minor timeframe retention differences exist because the Commission chose timeframes that are optimal for the performance of regulatory activities in Michigan.

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

No laws, rules, or other legal requirements duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rule has 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 FERC preservation of records rules were reviewed and compared to Michigan’s. The Commission considered whether to adopt FERC’s rules in their entirety as Indiana did, rather than promulgate separate rules for Michigan. The Commission decided against the adoption of the entirety of FERC’s rules because it appeared that doing so would add to the regulatory burden of Michigan utilities. For example, FERC’s practice is to update individual rules periodically, rather than to update the entire ruleset. Accordingly, if Michigan adopted FERC’s rules, Michigan utilities and the Commission Staff would need to continuously research/update/communicate new FERC rules for matters related solely to the Commission’s regulatory functions. In contrast, the

Commission’s practice is to revise its entire ruleset at once (as far as is practicable) and to do so infrequently, ensuring consistency and stability for utilities’ record keeping. In addition, the State of Michigan’s procedures for enacting rule changes provide for public hearing and comment so that Michigan utilities and the public have the opportunity to give input on any proposed rule changes. If FERC rules were adopted, there would be no opportunity for utilities and the public to bring comments to the Commission or attend a public hearing other than the initial adoption proceedings. Further, the Commission would not be able to make individualized changes to FERC rules that might otherwise be desirable for application in Michigan in consideration of concerns and suggestions received through the public comment and public hearing process.

4. If MCL 24.232(8) applies and the proposed rule(s) is 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 rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

The rules are not more stringent than any applicable federally mandate standard.

5. If MCL 24.232(9) applies and the proposed rule(s) is more stringent than the applicable federal standard, **either the statute that specifically authorizes the more stringent rule(s) or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

The rules are not more stringent than any applicable federally mandate standard.

Purpose and Objectives of the Rule(s):

6. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

The proposed rule revisions are intended to allow for modern methods of information storage and to avoid needlessly lengthy storage timeframes, thus reducing the regulatory burden for Michigan utilities. Electronic storage of information was in its early stages in 1980 (the date of the last rules revision). Advances have taken place. For example, cloud storage did not exist in 1980, but is now commonplace. Certain types of storage (punch cards, for example) are no longer used, but remain included in the rules that are currently in force. The Commission seeks to eliminate rules pertaining to obsolete media, and to reduce retention times (where appropriate) so that they are consistent with FERC rules (where appropriate), add clarity to the regulations, and meet modern regulatory needs.

- A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

No change in frequency of document storage is expected. Utility companies will be required to retain records as they always have been; however, the companies will be able to dispose of certain types of records sooner, should they choose to do so.

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

Currently, the rules address the retention of obsolete media (i.e. punch cards, paper and card stock, magnetic tape, etc.). The proposed rule revisions eliminate these references. The current rules require extraordinarily long retention times for some records. For example, R 460.2520(a)-(d) require retention of general ledgers for 50 years. This length of retention is not consistent with modern accounting and regulatory practices. The Commission is proposing a retention timeframe of 10 years.

- C. What is the desired outcome?

The desired outcome is to allow for modern information storage and to avoid needlessly lengthy storage timeframes.

7. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Currently, the rules provide for climate-controlled, physical storage of paper and other media documents. The proposed rule revisions provide for electronic storage and, in some cases, a shorter retention time. Utility companies should be able to reduce or eliminate brick-and-mortar storage facilities, thus reducing the costs of maintaining the storage space and, possibly, freeing the space for more efficient use. It is envisioned that electronic storage of information will allow personnel to retrieve needed documents quickly and efficiently, rather than searching through indexes and then file cabinets. It should be noted that the proposed rule revisions *do not require* electronic storage, but provide for the opportunity should the company choose to do so.

- A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

The current rules are outdated and do not take into account modern accounting and regulatory practices.

8. Describe how the proposed rule(s) 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 rule revisions are expected to have little, if any, effect on the health, safety, and welfare of Michigan citizens. The primary effect is expected to be that regulated utility companies may experience a simplified, less burdensome process of information storage and retrieval for Commission-related regulatory activities.

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

R 460.2505(3) and (4) are being deleted. Proposed rescissions are: R 460.2505a, R 460.2505b, R 460.2505c, and R 460.2568(b). Each of these rules require the retention of records via media that is considered obsolete, such as punch cards and microform, or address an area (water) that the Commission no longer regulates.

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 reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

The Commission does not anticipate any additional expenditures or savings.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

No appropriations or funding sources are required because the Commission does not anticipate that the proposed rule revisions will result in any additional expenditures.

12. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

No appropriations or funding sources are required because the Commission does not anticipate that the proposed rule revisions will result in any additional expenditures.

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

No burdens are anticipated. The proposed changes are expected to reduce 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 such other state or local governmental units 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.

No increase in costs or decrease in revenues is expected. No additional equipment, supplies, labor, or administrative costs are expected.

- A. 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.

No increases or reductions in costs are expected.

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

There are no changes to current programs, services, duties, or responsibilities. Municipal utilities regulated by the Commission are currently required to store specific documents for a specific period of time. The proposed rule revisions will permit the disposal of some records sooner than is currently required and will permit the use of acceptable electronic storage of documents, if desired.

- A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

No actions must be taken.

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 rule(s).

No additional expenditures are expected; accordingly, no funding sources are required.

Rural Impact:

16. In general, what impact will the rule(s) have on rural areas?

There is no expected impact on rural areas.

- A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

Gas, electric, and steam utilities located in rural areas may be affected in the same manner as all utilities that the Commission regulates; that is, document storage and retrieval would be made more efficient, if the utility desires to engage in appropriate electronic storage of documents.

Environmental Impact:

17. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

Perhaps, switching from paper storage to electronic storage may have some small effect on the amount of paper sent to incinerators or landfills.

Small Business Impact Statement:

18. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

There is no need to exempt small businesses. The proposed revisions do not require a change in current procedures.

- 19.** If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) 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 rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

Small businesses will not be required to change current procedures. No economic impact is expected. However, small businesses would likely find compliance with the new rules to be simpler than the current rules due to shorter retention periods and no necessity to store many paper documents in climate-controlled facilities.

- A.** Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

There are 30 alternative gas suppliers listed on the Commission website, but it is not certain how many alternative electric suppliers there are. Some of these are small businesses. There should be no deleterious effect on any of these businesses. Perhaps, record retention will be simpler and cheaper if the small business chooses to employ acceptable electronic storage instead of brick-and-mortar storage.

- B.** Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

There are no differing compliance or reporting requirements or timetables for small businesses. The small business may voluntarily choose to employ acceptable electronic storage of documents or it may keep its brick-and-mortar storage.

- 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 Commission referred to FERC standards and Commission Staff experts, such as accountants, CPAs, and engineers.

- D.** Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The Commission discussed the proposed storage methods with utility industry representatives and Commission Staff IT, legal, and accounting experts.

- 20.** Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

No disproportionate impact is expected.

- 21.** Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

No new report is required; therefore, there will be no added cost to prepare a report.

- 22.** Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

No new or differing cost of compliance is anticipated for small businesses, except, perhaps, reduced costs for storage of physical documents.

- 23.** Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

No additional legal, consulting, or accounting services expenses are anticipated.

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

No added costs are expected; accordingly, no economic harm or adverse marketplace effects are anticipated.

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.

No increased cost of administering or enforcing the proposed rule changes are anticipated; therefore, no lesser standards were considered. It is hoped that small businesses may have some reduced costs of document storage, thus reducing the regulatory burden.

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

Small businesses are expected to comply with the rules as they are written. No adverse impact on small businesses or the public is anticipated.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

No small businesses were involved.

- A. If small businesses were involved in the development of the rule(s), 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.

No compliance costs are anticipated.

- A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

Regulated utilities may benefit from increased efficiency and ease of storage in electronic media. Brick-and-mortar storage facilities may be reduced. No additional costs are anticipated.

- 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)? 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 any businesses or other groups.

29. Estimate the actual statewide compliance costs of the proposed rule(s) 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 compliance costs of any type related to the proposed rule changes.

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

Utility companies and their administrative support staffs will be affected.

- B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

Storing and retrieving records may be easier and faster.

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

There may be a reduced cost to businesses in that some brick-and-mortar storage facilities may be eliminated.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

It may be easier and faster to locate and retrieve stored documents.

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

The rule changes are not expected to have an impact on business growth or job creation or 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.

It is not anticipated that there will be any disproportionately affected individuals or business.

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 a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

Discussions took place with Commission experts and utility company personnel. Consumers Energy and DTE personnel remarked that the companies currently employ electronic storage, in addition to physical storage, and that updating the rules would bring the rules into alignment with actual, current business practices. No party anticipated having any additional costs if the proposed rules are approved. They anticipate lower cost due to potential reduction of brick-and-mortar, climate-controlled storage.

- 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 rule(s).

The proposed rule revisions were discussed with relevant Commission personnel and utility industry personnel who have expert knowledge of electronic document storage, current business practices, and regulatory requirements; and engage with utilities, large and small, through the course of daily regulatory work. Utility industry personnel remarked that the proposed rules would decrease the regulatory burden by allowing appropriate electronic storage of documents rather than brick-and-mortar, climate-controlled storage. The proposed rules would bring the rules into alignment with actual industry practices for electronic document storage.

Alternatives to Regulation:

35. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives. Revising the current rules is the best choice. No statutory amendments are needed.

- A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments are needed.

36. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

No private market-based mechanisms are feasible for the Commission because the rules are intended to aid the Commission and regulated utilities in the performance of regulatory responsibilities. Each

company is free to employ whatever storage system it chooses that meets the rule requirements for security, safety, and duration. This may or may not include the purchase of a service from a private, market-based company.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The Commission considered adopting the FERC rules in their entirety, but chose not to because it would eliminate individualized rule updates brought to the attention of the Commission through public comment and hearings, in addition to adding to the regulatory burden by requiring research of FERC rules that may or may not apply to the particular regulatory action taking place in Michigan.

Additional Information:

38. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

None. Rules are self-explanatory.

 ↓ **To be completed by the ORR** ↓

PART 4: REVIEW BY THE ORR

Date RISCBA received:	3-8-2019
Date RISCBA approved:	4/18/19
Date of disapproval:	
Explanation:	