



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

November 23, 2020

NOTICE OF FILING
ADMINISTRATIVE RULES

To: Secretary of the Senate
Clerk of the House of Representatives
Joint Committee on Administrative Rules
Michigan Office of Administrative Hearings and Rules (Administrative Rule #20-215-LR)
Legislative Service Bureau (Secretary of State Filing #20-11-03)
Department of Licensing and Regulatory Affairs

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Emergency Administrative Rule #2020-215-LR (Secretary of State Filing #20-11-03) on this date at 11:36 A.M. for the Department of Licensing and Regulatory Affairs entitled, "Emergency Rule Amending R 484.803, R 484.804, and R 484.805."

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

Sincerely,

Jocelyn Benson
Secretary of State

Melissa Malerman, Departmental Supervisor
Office of the Great Seal

Enclosure



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached **emergency administrative rules**, dated November 18, 2020, in which the Michigan Public Service Commission proposes to promulgate emergency rules entitled “**Emergency Rule Amending R 484.803, R 484.804, and R 484.805.**”

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: November 18, 2020

Michigan Office of Administrative Hearings and Rules

By: 
Katie Wienczewski,
Attorney

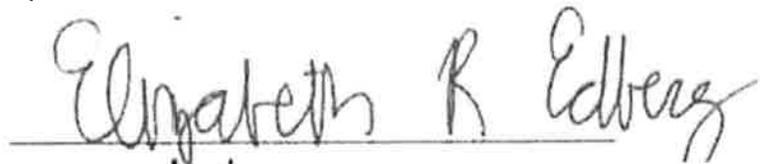
CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed emergency rules of the Department of Licensing and Regulatory Affairs, dated November 18, 2020, entitled "Emergency Rule Amending R 484.803, R 484.804, and R 484.805." I approve the rules as to form, classification, and arrangement.

Dated: November 18, 2020

LEGISLATIVE SERVICE BUREAU

By



Elizabeth R. Edberg,
Legal Counsel

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

PUBLIC SERVICE COMMISSION

EMERGENCY RULE
AMENDING R 484.803, R 484.804, AND R 484.805

Filed with the secretary of state on November 23, 2020

This rule takes effect upon filing with the secretary of state and remains in effect until January 2, 2021.

(By the authority conferred on the public service commission by sections 408(4)(c) and 413 of the emergency 9-1-1 service enabling act, 1986 PA 32, MCL 484.1408 and 484.1413; and section 48 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248)

FINDING OF EMERGENCY

This emergency rule is promulgated by the public service commission to suspend the deadlines for telecommunicators and trainee telecommunicators (telecommunicators) who are employed by primary public safety answering points to complete training modules or continuing education under R 484.803, R 484.804, and R 484.805 of the Michigan Administrative Code.

On March 10, 2020, Governor Gretchen Whitmer declared a state of emergency in response to the novel coronavirus (COVID-19) pandemic. Due to the risk of the transmission of this virus and the widespread and severe health harms posed by the COVID-19 pandemic, 9-1-1 telecommunicators have been unable to complete training modules, or continuing education requirements. According to the State 911 Committee (SNC), it has been necessary to develop and approve virtual training and allow 9-1-1 centers to schedule times for staff to attend. At a recent COVID-19 update press conference held on November 12, 2020, the state reported a single-day high of 6,940 COVID-19 cases and the Governor indicated the virus is spreading rapidly everywhere in Michigan. At this same press conference, Michigan's Chief Medical Executive stated that this virus is out of control.

On October 2, 2020, in *In re Certified Questions from the United States District Court, Western District of Michigan, Southern Division, (Midwest Institute of Health, PLLC v Governor)*, ___ Mich ___; ___NW2d ___ (2020) (Docket No. 161492) (October 2 ruling), the Michigan Supreme Court concluded that the Governor did not have authority under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421, to issue or renew executive orders beyond April 30, 2020, related to the COVID-19 pandemic, nor did the Governor have such authority under the emergency powers of the governor act, 1945 PA 302, MCL 10.31 to 10.33, because the act unlawfully delegates legislative power to the executive branch in violation of the Michigan Constitution. Thus, the Court held that executive orders issued by the Governor in response to the COVID-19 pandemic, including those allowing for suspension of any deadlines for telecommunicators to complete training modules or continuing education, now lack any basis under Michigan law.

November 18, 2020

On November 10, 2020, a letter was sent from the SNC to the Commission requesting that the Commission suspend compliance requirements for telecommunicator training. As a result of the Court's October 2 ruling, the SNC stated in the letter that a significant number of telecommunicators are delinquent in completing required training, and many more will become delinquent very soon. According to the SNC's letter, the process to address the large number of delinquencies under the current administrative rules would present a time-consuming and unnecessary hardship on the 9-1-1 centers, the State 9-1-1 Office, and the SNC. A copy of the November 10th letter is on file with the Commission.

More importantly, if a designated telecommunicator fails to complete the training required under current administrative rules, the SNC must issue a noncompliance notification to the employing agency and inform the employing agency that the designated telecommunicator is now an undesignated telecommunicator. Under R 484.802(l) of the Michigan Administrative Code, an undesignated telecommunicator is not able to perform dispatch duties except in an exigent circumstance. "Exigent circumstance" is defined in R 484.802(f) as a crisis situation lasting not more than 2 hours that may arise with little or no notice, in which the 9-1-1 calls cannot be managed without using a delinquent or undesignated telecommunicator.

The prospect of a substantial number of Michigan telecommunicators becoming undesignated raises significant concerns regarding the public health, safety, and welfare. If the noncompliance notification process is followed, the SNC reported that more than 500 9-1-1 telecommunicators would be in the process of becoming undesignated by the end of 2020, which would render them unable to answer 9-1-1 calls and perform emergent duties. If 500 or more telecommunicators were to become undesignated, public safety answering points would be dangerously stressed. To protect the public health, safety, and welfare, the SNC has requested that the Commission issue an emergency rule suspending the deadlines for telecommunicators to complete training modules or continuing education required under R 484.803, R 484.804, and R 484.805 of the Michigan Administrative Code, through January 1, 2021.

The Commission is very concerned that more than 500 telecommunicators may become undesignated and thus unable to answer 9-1-1 calls if the deadlines to complete required training modules or continuing education are not suspended. The loss of the dispatching services of that many telecommunicators will significantly harm the answering and dispatching of 9-1-1 calls and negatively affect Michigan residents' health, safety, and welfare. Furthermore, if the notice and participation procedures required under sections 41 and 42 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.241 and 24.242, were to be followed, the modification or suspension of the training requirements for telecommunicators would not be accomplished in time to prevent the potential of more than 500 telecommunicators becoming undesignated by the end of 2020.

The Commission, therefore, finds that the preservation of the public health, safety, and welfare requires the promulgation of an emergency rule as provided for in section 48 of the APA, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242. The emergency rule is being promulgated to suspend any deadlines for telecommunicators who are employed by primary public safety answering points to

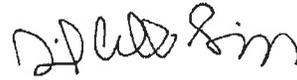
complete training modules or continuing education under R 484.803, R 484.804, and R 484.805 of the Michigan Administrative Code, until January 2, 2021, for those telecommunicators who are unable to complete such requirements due to the COVID-19 pandemic.

The public service commission adopts the following emergency rule.

Rule 1. Suspension of Deadlines.

Any deadlines for telecommunicators and trainee telecommunicators who are employed by primary public safety answering points to complete training modules or continuing education under R 484.803, R 484.804, and R 484.805 are suspended until January 2, 2021, for those telecommunicators and trainee telecommunicators who are unable to complete such requirements due to the COVID-19 pandemic.

MICHIGAN PUBLIC SERVICE COMMISSION



Daniel C. Scripps, Chair



Sally A. Talberg, Commissioner



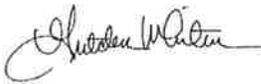
Tremaine L. Phillips, Commissioner

By its action of



Lisa Felice, Executive Secretary

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the public service commission that circumstances creating an emergency have occurred and the promulgation of the above rule is required for the preservation of the public health, safety, and welfare.



Gretchen Whitmer, Governor

11/21/20

Date