

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:

Licensing and Regulatory Affairs

Bureau name:

Michigan Office Of Administrative Hearings and Rules

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2021-84 LR

Title of proposed rule set:

Michigan Office of Administrative Hearings and Rules Administrative Hearing Rules

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 Michigan Office of Administrative Hearings and Rules (MOAHR), created by Executive Order 2019-06 and modified by Executive Order 2019-13, is a Type 1 agency within the Michigan Department of Licensing and Regulatory Affairs. MOAHR includes a centralized administrative hearing system that consolidates administrative state hearing functions, eliminates unnecessary duplication and facilitates the efficient use of state resources for the purpose of providing timely, professional, sound and impartial hearings. MOAHR also oversees administrative rulemaking for all state departments. MOAHR's centralized hearing function obviates the need for many agency-specific hearing rules. There are no parallel federal rules or comprehensive set of state standards for centralized administrative hearings.

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

No, these rules are not required by state law or federal mandate.

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.

This is not applicable because there is no applicable federal standard.

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

Although there are other states that centralize hearing functions, the structures of those systems vary in ways that make a side-by-side comparison impractical. Further, the proposed MOAHR rules for conducting hearings do not deal with issues of geographic location, topography, natural resources, commonalities, or economic similarities in a manner that lends itself to a cost and benefit analysis of deviations among the states.

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

This is not applicable because there are no similarly situated states with similar standards.

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

The general purpose of the rule set is to govern the practice and procedures for all administrative hearings conducted by MOAHR, by allowing for different procedures in specific types of hearings. The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness. The proposed changes do not duplicate, overlap, or conflict with any laws, rules or other legal requirements.

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.

Although the authority for some of the MOAHR hearing rules is derived from or modeled after the Michigan Court Rules and the Administrative Procedures Act, care was taken to avoid or minimize any unnecessary duplication.

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.

MCL 24.232(8) does not apply.

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.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

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

The general purpose of the rule set is to govern the practice and procedures for all administrative hearings conducted by MOAHR, allowing for different procedures in specific types of hearings. The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness. These rules are not the type of regulatory rules designed to alter behavior, rather they are intended to bring consistency to the legal processes of administrative hearings and facilitate understanding of the practice expectations for both lay and legal participants.

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

The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness. These rules are not the type of regulatory rules designed to alter behavior, rather they are intended to bring consistency to the legal processes of administrative hearings and facilitate understanding of the practice expectations for both lay and legal participants. These proposed changes would promote greater efficiency, consistency, and fairness.

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

These rules are not the type of regulatory rules designed to alter behavior, rather they are intended to bring consistency to the legal processes of administrative hearings and facilitate understanding of the practice expectations for both lay and legal participants. The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency, consistency, and fairness.

C. What is the desired outcome?

The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency, consistency, and fairness.

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.

These rules are not specifically designed to alter behavior – however, without rule authority for electronic filings and telephone or video-conferencing, parties may still be required to travel unnecessarily or assume the costs necessary to transmit documents using postal services. Moreover, by eliminating the need for the coordination of in-person participation of parties and witnesses, hearings are less likely to be adjourned. This will expedite moving the dockets of the administrative law judges and provide quicker resolution of issues for the parties.

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

The general purpose of the rule set is to govern the practice and procedures for all administrative hearings conducted by MOAHR, allowing for different procedures in specific types of hearings. The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency, consistency and fairness.

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 hearings conducted by MOAHR's administrative law judges often involve protecting the health, safety and welfare of citizens by addressing violations of licensed professionals (e.g. health professionals, hospital systems, emergency medical personnel, builders) or assuring compliance with safety standards (e.g. MIOSHA or Bureau of Child & Adult Licensing cases involving daycare and adult foster care facilities). In addition, MOAHR hearings often involve regulation of services and benefits that protect the disabled, the unemployed or those suffering financial hardships or living in poverty (e.g. unemployment appeals, Bureau of Services to Blind Persons, Department of Human Services benefit hearings, Barrier Free Design hearings). MOAHR hearings also protect the environment and services necessary for daily living throughout our communities (e.g. Department of Environment, Great Lakes, and Energy, Department of Natural Resources, Public Service Commission and Department of Transportation). The welfare of children is enhanced and protected in MOAHR hearings (e.g. Special Education, & Department of Human Services expunction). Financial and property concerns of individuals, workers, employers and businesses are protected by MOAHR hearings (e.g. Tax Tribunal, Department of Insurance & Financial Services cases, Corporations, Securities and Commercial Licensing cases, Employment Relations cases, Employment Security cases, Wage & Fringe Benefit cases, Workers Compensation cases, Retirement Services cases). With more efficient and user-friendly hearing procedures resulting from the proposed rules, issues involving these protections and benefits will be resolved in a more expeditious manner.

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

R 792.10414 is being rescinded.

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).

Although it is not possible to quantify the approximate cost savings, it can be said that the administrative hearings process (the regulatory activity covered by this rule set) has improved from a technological standpoint with electronic filing and remote video and telephone hearing capabilities but otherwise remains unchanged. Moreover, the adoption of the proposed rules for electronic filings will save paper/supply costs and proposed rules increasing telephone and video-teleconferencing hearings will save fuel costs to the state and public and eliminate room rental costs necessitated when administrative law judges must travel across the state to hold hearings. Expansion of the remote hearing platform will also allow for a reduction in the agency's physical office-space footprint, which in turn will result in realized savings from canceled lease space.

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

No additional expenditures are contemplated from promulgation of the proposed rules.

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 general purpose of the rule set is to govern the practice and procedures for all administrative hearings conducted by MOAHR, allowing for different procedures in specific types of hearings. The purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness. No additional burdens are anticipated by the proposed rules.

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 identified 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 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.

Local governmental units may incur fees associated with hearings before the tax tribunal. Although it is not possible to estimate potential savings, the ability to file and serve pleadings and documents electronically in tax cases should offset some of the fee expenses for those litigating matters before the tax tribunal.

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

Neither the existing hearing rules nor the proposed rules impose new responsibilities on municipalities. There are no new record keeping, reporting or operational practices necessitated by the proposed 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.

Neither the existing hearing rules nor the proposed rules impose new responsibilities on municipalities. There are no new record keeping, reporting or operational practices necessitated by the proposed rules.

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.

The new rules do not increase expenditures in a manner that would require appropriations. The few filing fees that may be incurred should be covered by the cost savings of reduced filing and fuel expenses.

Rural Impact

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

The proposed rules will not have a specific impact on rural areas.

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

This is not applicable as the proposed rules will not have a specific impact on rural areas.

Environmental Impact

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

The proposed rules will have a positive environmental impact by lessening the proliferation of paper and reducing the use of fossil fuels for traveling.

Small Business Impact Statement

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

Exempting small businesses would not be appropriate because small businesses need access to fair and impartial administrative hearings just as other individuals and entities. Small businesses continue to be subject to existing regulations. In addition, the state maintains the right and obligation to assure compliance with those regulations, often through the administrative hearing process.

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.

Small businesses are not disproportionately impacted by the MOAHR rules and may be assisted by the process as described above.

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

It is impossible to identify small businesses that might need or be subject to a MOAHR hearing. If a small business is party to a MOAHR hearing, it will reap the same benefits as all other agencies, businesses and individuals from having more streamlined hearing procedures and processes that the proposed rules would provide.

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.

MOAHR is not a regulatory agency and does not impose reporting requirements on small businesses and does not set compliance standards aimed at small businesses.

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.

See above. MOAHR proposed rules do not impose reporting requirements on small businesses.

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

MOAHR rules for administrative hearings do not impose performance standards.

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

MOAHR hearing rules will not impact small businesses differently from any other business or individual that becomes a party to an administrative hearing.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

MOAHR hearing rules will not require reports from small businesses.

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 will be no additional equipment, supplies, labor or increased administrative costs to small businesses as a result of MOAHR rules. Most small businesses will continue to operate outside of the jurisdiction of MOAHR rules for hearings. If a small business becomes a party to a case on a onetime basis, the costs of litigation will depend on the nature of the individual case and cannot be predicted.

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.

Most small businesses will continue to operate outside of the jurisdiction of MOAHR rules for hearings, and no legal, consulting or accounting services will be incurred by the proposed rules. If a small business becomes a party to a case on a onetime or occasional basis, the costs of litigation will depend on the nature of the individual case and cannot be predicted. Under some existing regulations small business owners can represent themselves, some businesses have retained legal counsel, and some will need to hire licensed attorneys. There is no legal consideration or cost that would apply in all small business matters before an administrative law judge.

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

See above. There will be no standard or reoccurring costs to small businesses as a result of the proposed 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.

Exemptions or lesser standards are not necessary for small businesses, so the agency will not incur enforcement costs.

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

Because the MOAHR proposed rules address legal procedures and not regulatory compliance standards, there is no need to exempt small businesses and there is no public interest served from exemptions.

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

There was no reason to single out small businesses for purposes of input in the drafting of these revised legal procedures and practices that will apply equally and impartially to most individuals, public and private entities, and small or large businesses. Indeed, engaging in such outreach would have been contrary to MOAHR's underlying mission of providing an impartial administrative hearing process.

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.

Cost-Benefit Analysis of Rules (independent of statutory impact)

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

As discussed above, the impact of these proposed rules should not significantly impact costs to businesses. The expansion of electronic filings and the use of telephonic and video-conferencing hearings have the potential to save money in individual hearings -however, since most businesses or groups will not be impacted by the proposed rules, statewide costs cannot be estimated.

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

No businesses or groups will be directly affected by, bear the costs of, nor 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.

No additional costs will be imposed on businesses or other groups as a result of these 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.

The proposed MOAHR rules will not result in costs to individuals for education, training, examination, license fees, new equipment, labor, or record keeping.

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

Any individual who is a party to a case 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 will provide for more streamlined hearing procedures and processes.

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

It is impossible to quantify the cost to any specific business, individual or group because it cannot be predicted when and how often they will avail themselves of MOAHR's hearing system. However, anticipated efficiencies as a result of the proposed rule revisions include less costs overall from reducing the necessity to travel to participate in a hearing and also reduce printing costs due to the availability of electronic transfer of data and documents.

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 will provide for more streamlined hearing procedures and processes.

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

The proposed MOAHR rules provide flexibility for businesses in the way they can access and participate in the MOAHR hearing processes. However, the primary purpose of the rules is to consolidate and streamline legal procedures and practices for all hearing participants. The rules themselves are unlikely to have any significant or measurable impact on business growth and job creation.

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.

The proposed rule revisions will not disproportionately affect any individuals or businesses regardless of their industrial sector, segment of the public, business size or geographic location, as the purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency, consistence, and fairness.

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 purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness. While no external sources were relied upon in this revision process, over 50 individuals and organizations were consulted in drafting the original underlying rules. These stakeholders included state agencies, administrative law judges, assistant attorneys general, private law firms, community organizations and business associations. Through this process, concerns about changes and potential impact on both public and private individuals, businesses and interested organizations was considered and addressed. The impact of legal wording, rather than economic concerns, was a primary focus of decisions to draft new rules, revise existing rules or recommend rescission of 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.

This is not applicable as no estimates were made.

Alternative to Regulation

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

There are no reasonable alternatives as the purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness.

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

This is not applicable as there are no reasonable 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.

MOAHR functions as an administrative court system, not a regulatory agency. Because of the nature of legal proceedings in our country's jurisprudence system, no private-market based court system is feasible in Michigan or any other state.

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.

There are no reasonable alternatives to the proposed revised rules as the purpose of the proposed changes is to refine certain rules to clarify current practices, reflect statutory changes and department reorganizations, eliminate duplicative or unnecessary rules, and promote greater efficiency and fairness.

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.

The rules contain self-explanatory legal procedures and no further methods of compliance will be necessary.