

**Michigan Office of Administrative Hearings and Rules  
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

**REQUEST FOR RULEMAKING (RFR)**

**1. Department:**

State

**2. Bureau:**

Elections & Campaign Finance

**3. Promulgation type:**

Full Process

**4. Title of proposed rule set:**

Electronic Voting Systems

**5. Rule numbers or rule set range of numbers:**

R 168.771 - R 168.793

**6. Estimated time frame:**

6 months

**Name of person filling out RFR:**

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**7. Describe the general purpose of these rules, including any problems the changes are intended to address.**

To update the terminology to account for technological advances since the existing rules were promulgated in 1979. To account for the qualified voter file, electronic pollbooks, tabulators, Voter Assist Terminals (VATs), on-demand voting systems, and other parts of the existing technology used currently.

**8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).**

“The provisions of sections 794 to 799a control with respect to elections where electronic voting systems are used, and shall be liberally construed so as to carry out the purpose of the provisions. A provision of law relating to the conduct of elections that conflicts with sections 794 to 799a does not apply to the conduct of elections with an approved electronic voting system. The secretary of state shall promulgate rules to implement the provisions of sections 794 to 799a, in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.” MCL 168.794c.

“The secretary of state shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, governing the tabulation of ballots, certification of results, delivery of ballots and certified results, and sealing of devices and ballot boxes after the polls are closed.” MCL 168.797b.

“The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” MCL 168.21.

“The secretary of state shall . . . issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state.” MCL 168.31(1)(a).

“The director of elections shall be vested with the powers and shall perform the duties of the secretary of state under his or her supervision, with respect to the supervision and administration of the election laws.” MCL 168.32(1).

“The secretary of state shall select a uniform voting system under the provisions of this section.” MCL 168.37(1).

“The secretary of state shall develop and maintain an electronic voter registration interface to allow an applicant to submit a voter registration application electronically through the secretary of state's website.” MCL 168.509ii(1).

“The secretary of state shall prescribe procedures for preparing test decks and conducting accuracy tests for electronic voting systems in this state.” MCL 168.794a(3).

**A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).**

MCL 168.21, MCL 168.31(1)(a), MCL 168.32(1), MCL 168.37, MCL 168.509ii, MCL 168.794a (3), MCL 168.794c, and MCL 168.797b.

**B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.**

Yes. MCL 168.794c requires the Secretary of State to promulgate rules that govern electronic voting systems. Additionally, MCL 168.797b requires the Secretary of State to promulgate rules "governing the tabulation of ballots, certification of results, delivery of ballots and certified results, and sealing of devices and ballot boxes after the polls are closed," and MCL 168.31(1)(a) requires the Secretary of State to promulgate rules "for the conduct of elections and registrations [.]" While these rules exist currently, they were last updated in 1979. Updated, accurate rules are necessary to foster the administration of elections.

**9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The rules do not conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

**10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?**

Yes. The following items contain the subject matter of the rules:

- Chapter 10 of the Election Officials' Manual
- Chapter 16 of the Election Officials' Manual
- Determining the Validity of Ballot Markings Instructions
- Test Procedure Manual for Voting Systems
- Receiving Board Guide
- Early Voting Site Administration Procedures

**11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?**

Yes.

**12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?**

Full Process

**13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The rules would not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

**14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.**

This proposed rule has not been submitted to the public for comment. However, the rules have been sent to the associations of county clerks and municipal clerks to incorporate their feedback as well as incorporating feedback the clerks have provided during the course of implementing legislation.

**15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.**

The proposed rules do amend existing rules. The rules were promulgated in 1979 and have not been amended since. The current rules were promulgated at the advent of electronic voting systems and provide for outdated terminology and process, including the use of chads, pencils, and "punching tools." They do not account for the Qualified Voter File, electronic pollbooks, touch screens, voter assist terminals, ballot on demand systems, or other technological advancements.

**16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?**

Yes, as mentioned above, there is no continued need for the rules pertaining to punching a ballot with a stylus, and similar outdated processes.

**17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.**

No

**Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.**