

Michigan Office of Administrative Hearings and Rules
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Licensing and Regulatory Affairs

Division/Bureau/Office:

Michigan Office Of Administrative Hearings and Rules

Name of person completing this form:

Wendy Wisniewski

Phone number of person completing this form:

517-282-7812

E-mail of person completing this form:

WisniewskiW1@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Elizabeth Arasim

2. Rule Set Information

MOAHR assigned rule set number:

2021-84 LR

Title of proposed rule set:

Michigan Office of Administrative Hearings and Rules Administrative Hearing Rules

3. Purpose for the proposed rules and background:

Agency Report to JCAR-Page 2

The Michigan Office of Administrative Hearings and Rules (MOAHR) 19 part Uniform Hearing Rules are comprised of general hearing rules in the first part and specific practice areas in the 18 parts that follow. The general purpose of the rules 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. Among the provisions and rules to be amended or rescinded are as follows:

Part 1: General. The proposed changes to the general rules address opportunities for the electronic or e-mail filing of documents and service to other parties, and the approved procedure for such filing and service. The proposed changes also define and limit the use of portable electronic devices during an administrative hearing. The proposed changes also clarify that denial of a motion for summary disposition does not need to be in a proposal for decision format to a department director, board, or final decisionmaker.

Part 2: Tax Tribunal. The proposed changes update certain procedures to reflect current law and approved practices, such as the electronic payment of filing fees, the exclusion or redaction of personal identifying information, appeal by statutorily required petition, transfer of appeals from the small claims division to the entire tribunal, extensions and the default process, notice filing requirements, prehearing conferences, and mediation.

Part 4: Public Service Commission. The proposed changes reflect new statutory requirements found in 2016 PA 341 and 2016 PA 342, as well as make minor changes to rules concerning electronic filing and other housekeeping matters. The proposed rules also rescind rules concerning motor carriers, because jurisdiction over motor carrier regulation has been transferred to the State Police.

Part 12: Wage and Fringe Benefit Hearings. The proposed changes add references to the Paid Medical Leave Act, “notice of violation” procedures, and authorized representation at a hearing.

Part 19: Corrections. The proposed changes address the notice of hearing and record evidence provisions of the hearings and decisions section.

4. Summary of proposed rules:

Agency Report to JCAR-Page 3

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5. List names of newspapers in which the notice of public hearing was published and publication dates:

The Mining Journal – February 1, 2023

Flint Journal – February 2, 2023

Grand Rapids Press – February 2, 2023

6. Date of publication of rules and notice of public hearing in Michigan Register:

11/1/2022

7. Date, time, and location of public hearing:

11/16/2022 09:00 AM at Hearing Room B, 2nd floor, Ottawa Building , Michigan Office of Administrative Hearings and Rules Ottawa Building, 2nd floor, Hearing Room B 611 W. Ottawa, Lansing, Michigan 48909-8295

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1342>

9. List of the name and title of agency representative(s) who attended the public hearing:

Suzanne Sonneborn, Executive Director, MOAHR

DJ Pascoe, Division Director, MOAHR

Peter Kopke, Administrative Law Judge, Michigan Tax Tribunal

10. Persons submitting comments of support:

Joshua Wease, JD, LLM

Clinical Professor of Law, Director, Alvin L. Storrs Low-Income Taxpayer Clinic

Michigan State University College of Law

11. Persons submitting comments of opposition:

There were no comments of general opposition to the rules.

12. Persons submitting other comments:

Lance Wilkinson

Director, Bureau of Tax Policy

Michigan Department of Treasury

Leah Robinson

Director of Legislative Affairs and Leadership Programming

Michigan Chamber of Commerce

Steven P. Schneider

Honigman LLP

13. Identify any changes made to the proposed rules based on comments received during the public comment period:

Agency Report to JCAR-Page 5

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury		Rule 109(1): This subrule refers to filings submitted “electronically using a hearing system-approved electronic filing system” but does not refer expressly to submission by “email” even though subrule (3) expressly refers to documents and pleadings “submitted by email.”	<p>The term “email” in Rule 109(3) should be read in context with Rule 109(6), which, as proposed, says: (6) Documents and pleadings will not be accepted by email unless specifically authorized by the administrative law judge, administrative law manager, or pursuant to an order issued by the executive director of the hearing system.</p> <p>To address Treasury’s concern, MOAHR will strike “by email or by” from Rule 109(3) and add “or by email when specifically authorized under subrule (6) of this rule”.</p>	R 792.10109 (3)

Agency Report to JCAR-Page 6

2	Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury		Rule 109(5): This subrule describes the acceptable formats for an electronic signature. Please consider incorporating that language into a new definition of "electronic signature" under Rule 103 instead.	MOAHR agrees with this proposed change and will strike from Rule 109(5) "An electronic signature may be an electronic symbol attached to or logically associated with a document or pleading and executed or adopted by a person with the intent to sign the document or pleading. This may be a graphic image of the signature or text designated as a signature, such as "/s/ John Smith," "/s/ John Smith, Attorney," or "/s/ John Smith, Authorized Representative." MOAHR will instead add this language to a new definition of "electronic signature" under Rule 103.	R 792.10103 R 792.10109 (5)

Agency Report to JCAR-Page 7

3	Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury		Rule 126(1): Multiple comments: • Change “the” to “each” before “opposing party” in the newly added language as there may be more than one opposing party. • The proposed period of “not later than” 7 days is confusing and can be misinterpreted. Please consider changing to “not less than” as used in other Rules (e.g., Rule 253 (2), Rule 275(1)- (2), and Rule 287 (1))	MOAHR agrees with these proposed changes and will strike “the” from Rule 126(1) and replace with “each” before “opposing party” in the newly added language; MOAHR will also strike “not later than” from Rule 126(1) and replace with “not less than”.	R 792.10126

Agency Report to JCAR-Page 8

4	Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury		Rule 134(2): Should the reference to “failing to attend” be changed to “failing to participate” to be consistent to the Tribunal’s proposed changes to subrule (1) which strike the word “attend”?	MOAHR agrees with this proposed change and will strike “attend” from Rule 134(2) and replace with “participate in”. In addition, because the term “hearing” is not used in Rule 134 (1) [instead the term “proceeding is used], MOAHR will strike “hearing” from Rule 134(2) and replace with “in a scheduled proceeding after a properly served notice”.	R 792.10134
5	Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury		Rule 207: The heading for this rule includes “and electronic signatures” even though the rule does not contain an explicit reference to an “electronic” signature and the definition of “signed” includes electronic signatures so just having the heading refer to “signatures” is sufficient.	The Tax Tribunal agrees with this proposed change and will strike “and electronic signatures” from the title of Rule 207 as unnecessary.	R 792.10207

Agency Report to JCAR-Page 9

6	Leah Robinson Director of Legislative Affairs and Leadership Programming Michigan Chamber of Commerce		Requiring a motion to amend in order to subsequently file an amended petition creates unnecessary and time-consuming redundancies.	The Tax Tribunal agrees with this change and will strike the rule and renumber remaining sections.	R 792.10221 (3)
7	Steven P. Schneider, Honigman, LLP		Rule 225(4): The proposed rules seek to change a threshold requirement for motions for immediate consideration. The tribunal would consider a motion for immediate consideration only if it would include a statement verifying that the moving party has “spoken with”-- not just “notified”-- all of the other parties regarding the filing of the motion, as is now required. See R. 792.10225(4). The “spoken with” requirement is impractical. Caller ID is now ubiquitous. Unfortunately, if attorneys are aware that a motion for	The Tax Tribunal agrees with this change and will strike “spoken with” from Rule 225(4) and replace with “notified.	R 792.10225 (4)

Agency Report to JCAR-Page 10

			<p>immediate consideration may be sought and seek to delay the requested relief, however justified, they may not return phone calls. In such a case, the current notification requirement is met by sending an email and/or leaving a voicemail. If a simple statement indicating notification is not sufficient, we would suggest requiring a statement to the effect of: ‘the moving party has made good faith efforts to contact opposing counsel via both telephone and email, but has neither reached opposing counsel, nor received a reply.</p>		
8	<p>Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury</p>		<p>Rule 227: The elimination of the requirement in subrule (5) that the petition include a copy of the “assessment or other notice” being appealed from is</p>	<p>The Tax Tribunal agrees with this change and Rule 227(3)(d)(ii) will revert back to original language and also reference “order” and “decision,” as provided in MCL</p>	R 792.10227

			<p>problematic, unfair, and could lead to unintended consequences. For example, this runs afoul of the concept of “notice pleading” (and may impair due process) as the respondent may not be able to ascertain the full extent of the matters intended to be appealed; particularly if the petitioner fails to list or otherwise describe all of the assessments or orders in its petition. This could create undue burdens on the respondent as they may have to determine what the appeal entails and prepare for the broadest potential scope of the potential issues on appeal and/or tax period or tax type. In addition, removing this requirement on the petitioner could jeopardize the petitioner’s appeal under MCL 205.22, and</p>	205.22(1).	
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Agency Report to JCAR-Page 12

			<p>the Tribunal may, likewise, lack jurisdiction as a result if the petitioner did not list or otherwise describe the assessment in its petition. It is strongly recommended that the current requirement be maintained and that it be expanded to also reference an “order” and “decision” as provided in MCL 205.22(1) and consistent with Rule 227(3).</p> <p>The rule should also reference “order” and “decision,” as provided in MCL 205.22(1).</p>		
9	<p>Lance Wilkinson Director, Bureau of Tax Policy Michigan Department of Treasury</p>		<p>Rule 277(3): The Rule should also reference “decision,” as provided in MCL 205.22(1)</p>	<p>The Tax Tribunal agrees with this change and will add “decision” to Rule 277(3).</p>	<p>R 792.10277 (3)</p>

14.Date report completed:

5/25/2023