

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

State

Bureau name:

Elections & Campaign Finance

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2024-63 ST

Title of proposed rule set:

Disqualification from Ballot Based Upon Contents of Affidavit of Identity

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.

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association that address challenges to a candidate's affidavit of identity.

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

The 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.

The rules do not exceed a federal standard.

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

The agency did not compare the proposed rules to standards in other states because the agency could not find a similarly situated state that has the same procedures the proposed rules are attempting to regulate.

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

The agency did not compare the proposed rules to standards in other states because the agency is not aware of a similarly situated state that has the same procedures the proposed rules are attempting to regulate; accordingly, the agency does not think the proposed rules exceed standards in other states because the agency is not aware of any similar standards in other states.

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

There are no laws, rules, and other legal requirements that duplicate, overlap, or conflict with the proposed rules.

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.

The rules have not been coordinated with other federal, state, and local laws as there are none applicable to the same activity or subject matter. There is no duplication of any other federal, state, or local law.

Purpose and Objectives of the Rule(s)

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

The purpose of these rules is to clarify required procedures regarding challenges to the contents of a candidate's affidavit of identity. Under MCL 168.558(1): "When filing a nominating petition, qualifying petition, filing fee, or affidavit of candidacy for a federal, county, state, city, township, village, metropolitan district, or school district office in any election, a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an affidavit of identity. A candidate nominated for a federal, state, county, city, township, or village office at a political party convention or caucus shall file an affidavit of identity within 1 business day after being nominated with the secretary of state. The affidavit of identity filing requirement does not apply to a candidate nominated for the office of President of the United States or Vice President of the United States." While the exact frequency of challenges cannot be predicted ahead of time, any time an affidavit of identity is filed there is the potential that a challenge to the affidavit of identity is filed. The rules do not seek to alter the frequency of challenges but rather seek to clarify what happens when a challenge is brought.

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

The rules do not seek to alter the frequency of challenges but rather seek to clarify what happens when a challenge is brought; thus, no change in frequency is predicted.

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

Currently, there are no rules in place setting out deadlines or filing requirements for challenges to an affidavit of identity. The rules seek to establish deadlines and formal requirements to provide clarity to challengers, candidates, and filing officials.

C. What is the desired outcome?

A uniform and clear process for making challenges to an affidavit of identity and for resolving those challenges.

5. 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.

The harm is that candidates, challengers, and filing officials do not have clear guidelines to follow when challenges to affidavits of identity are brought, and if the rules are not promulgated this confusion will persist because there will be no formal guidance in place.

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

There are currently no rules addressing affidavit of identity challenges so these proposed rule amendments will add rules that will address challenges to affidavits of identity. Accordingly, nothing that is currently written is being changed, rather, rules that are missing and needed are being added.

6. 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 proposed rules provide protection to the public by clearly setting out uniform standards for dealing with affidavit of identity (AOI) challenges - clear and uniform standards are good for any citizen who may challenge an AOI or run for office. It is also good for filing officials to have clear guidance of how to process AOI challenges. Finally, having the rules clearly explained ahead of time promotes fairness in election processes and that is good for all Michigan citizens. The deadlines and processes imposed by the rules do not establish burdensome regulatory rules but rather codify timelines and authenticity requirements that represent the bare minimum to allow for reasonable review and processing of the challenge.

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

There are no rules that are obsolete or unnecessary that can be 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.

8. 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).

It is not expected that the promulgation of rules will have a fiscal impact on the agency promulgating the rules.

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

No agency appropriation has been made and no funding source has been provided because it is not anticipated that the department will have any expenditures associated with the proposed rules.

10. 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 proposed rules are necessary to clarify the regulatory framework for processing affidavit of identity challenges.

There are no anticipated burdens on individuals as the rules are not expected to have any fiscal impact, add any additional administrative burdens, or require any duplicative acts.

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

11. 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.

There are no estimated increases or decreases in revenues to other state or local governmental units as a result of the rule. There are also no estimated cost increases or reductions for other state or local governmental units as a result of the rules. The rules do not require the purchase of any equipment, supplies, nor do they require increased costs of labor or increased administrative costs in either the initial imposition of the rule and any ongoing monitoring of the rule. The rule is expected to have no financial impact.

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

There is no program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the proposed rules except that filing officials who accept affidavits of identity (AOIs) and who are already obligated to process challenges to those AOIs will now have rules in place that explain the deadlines for accepting challenges and responses to challenges. Similarly, those same filing officials will also gain rules addressing the required form that the challenges must be presented in. As a result, these filing officials will follow the requirements set out in the proposed rules and reject challenges that do not meet them.

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.

Filing officials who accept affidavits of identity (AOIs) and who are already obligated to process challenges to those AOIs will now have rules in place that explain the deadlines for accepting challenges and responses to challenges and the required form that the challenges must be presented in. Accordingly, because under the proposed rules there will now be some formal requirements for challenges these filing officials will follow those requirements and reject challenges that do not meet them. For these reasons, it is possible that the rules will represent a change in operational practices for some filing officials, but in general any change is unlikely as the proposed rules simply codify best practice. The rules do not impose any new record keeping or reporting requirements.

13. 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.

No appropriation to state or local governmental units has been made and no funding source has been provided because there are no additional expenditures associated with the proposed rules.

Rural Impact

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

The rules are not expected to impact rural areas.

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

There are no public or private interests specific to rural areas that will be affected by the rules.

Environmental Impact

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

The rules have no impact on the environment.

Small Business Impact Statement

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

The agency did not consider exempting small businesses from the proposed rules because the rules do not apply to small businesses.

17. 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 exempt because the rules do not apply to small businesses. The rules will have no impact on small businesses.

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

The agency estimates that zero small businesses are affected by the proposed rules and that there is no effect on small businesses as a result of the proposed rules.

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.

The proposed rules do not impact small businesses, so the agency did not establish any compliance or reporting requirements or timetables for small businesses, and there are no reporting, record-keeping, or other administrative costs to 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.

The agency did not consolidate or simplify the compliance and reporting requirements for small businesses because there are no such requirements, as the rules do not impact small businesses at all.

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

The proposed rules do not apply to small businesses, so the agency did not establish any performance standards to replace design or operation standards.

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

There will be no disproportionate impact the proposed rules may have on small businesses because of their size or geographic location because the rules do not apply to small businesses.

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

Small businesses are not required to comply with the proposed rules because the rules do not apply to small businesses, so there is no report or estimated cost to identify.

20. 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 are no anticipated costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs because the rules do not apply to small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no estimated costs of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules because the rules do not apply to small businesses.

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

Small businesses will not have to absorb any costs because the proposed rules do not impose any costs and do not apply to small businesses.

23. 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.

There is no cost of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses because the rules do not apply to small businesses.

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

There is no reason to exempt or set lesser standards of compliance for small businesses because the rules do not apply to them, so there is no impact on the public interest to identify.

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

Small businesses have not been involved in the development of the proposed rules at all because the rules are not relevant to them.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small business was involved.

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

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

There are no anticipated statewide compliance costs of the rule amendments on businesses or groups.

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

Individuals who wish to challenge a candidate's affidavit of identity, candidates who are challenged, and filing officials are affected by the rules and will directly benefit from there being clear guidelines about how the challenge process works. It is not possible to estimate the number of people who will fall into those categories because the number varies from election to election. There will be no cost to the 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.

There will be no additional costs imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping), the rules simply explain the applicable deadlines and form requirements of the challenge process. No business, group, or individual is required to challenge an affidavit of identity, so the rules do not make anyone do anything. The challenge process is completely voluntary.

27. 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 agency estimates that there will be no compliance costs of the proposed rules on individuals.

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

Individuals who wish to challenge an affidavit of identity, candidates who have their affidavit of identity challenged, and filing officials will be affected by the rules to the extent that the rules will explain the procedure for processing those kinds of challenges. It is impossible to estimate the number of individuals who will fall into these categories because it varies from election to election and no one is required to run for office or challenge an affidavit of identity.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

It is not anticipated that the proposed rules will have a quantitative impact. The qualitative impact that is anticipated is that the proposed rules would create a uniform and clear procedure for processing challenges to affidavits of identity.

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

There are no anticipated cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

29. 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.

It is not anticipated that the proposed rules will have a quantitative impact, either primary/directly or secondarily/indirectly. The qualitative primary/direct impact that is anticipated is that the proposed rules would create a uniform and clear procedure for processing challenges to affidavits of identity. It is assumed that having clear rules in place that everyone is aware of and can follow is a public good. This public good that arises from clarity around the AOI challenge process is also a secondary/indirect benefit.

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

The proposed rules are not expected to impact business growth and job creation (or elimination) in Michigan.

31. 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 expected that any individuals or businesses will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

32. 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 agency relied on the Department of State's current practice, knowledge of the timelines that are realistic for other filing officials, and current procedures used by filing officials. The agency relied on agency staff and its regulatory experience to formulate estimates and assumptions and determine the need for the proposed rules. It further relied on public confusion around the process for filing challenges to a candidate's affidavit of identity to evaluate the cost-benefit of the proposed rules in that this confusion was evidence that the rules were needed.

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.

The agency relied upon agency staff and its regulatory and administrative experience to determine the impact of the proposed rules. The agency also considered local filing official practices and questions from the public that demonstrated the need for the proposed rules. The agency did not rely on any published reports or information provided by associations or organizations.

Alternative to Regulation

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

The only alternative to the proposed rules to achieve the same or similar goals would be amendment of the Michigan Election Law to provide for the exact guidelines that the proposed rules provide.

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

The only alternative to the proposed rules to achieve the same or similar goals would be amendment of the Michigan Election Law to provide for the exact guidelines that the proposed rules provide, so if that alternative to the rules is pursued then the amendment would be necessary.

34. 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.

A regulatory program established by a private third-party is not feasible because the subject of the rules concerns the administration of elections. The Michigan Election Law reserves this power solely to the Secretary of State, Bureau of Elections, County, City, and Township clerks. The agency is not aware of a private market-based system, as opposed to a state regulatory body, for this purpose that is utilized in any other state.

35. 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.

Due to the nature of regulating the manner of elections, no significant alternatives to reasonable regulation were considered during the development of the proposed rules. The rules are intended to codify best practices and no alternatives were considered during internal discussions or discussions with stakeholders, affected parties, or advisory groups.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules explicitly inform individuals of requirements and methods of compliance.