

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

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Education

2. Bureau:

Superintendent of Public Instruction

3. Promulgation type:

MCL 24.244 (1)

4. Title of proposed rule set:

Declaratory Rulings and Promulgation of Rules

5. Rule numbers or rule set range of numbers:

R 340.1351 - R 340.1355

6. Estimated time frame:

3 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.

The purposes of the proposed rules are to:

- Update contact information by adding the superintendent of public instruction's email address to align with current practice.
- Specify required contact information and means of contact for members of the public to ensure that they are properly notified of decisions on requests for declaratory rulings and for promulgation of rules.
- Clarify that timelines are measured in calendar days.
- Remove the requirement of certified mail (return receipt requested), which requires a trip to a post office, for delivery of notices of denial of requests. The requirement, which is outdated in light of the transition to primarily remote work, is replaced with the options of email or mail to align with current practice. With the addition of the email option, certainty of delivery is ensured.
- Clarify that certain interested parties shall receive statements explaining the denial of requests for declaratory rulings.
- Clarify to whom and by what means the superintendent of public instruction shall send declaratory rulings.
- Delete R 340.1352(8) because it duplicates and is superseded by requirements set forth in statutes related to the retention and disposal of public records, including the Management and Budget Act, 1984 PA 431, MCL 18.1284 to 18.1291, and the Michigan History Center Act, 2016 PA 470, MCL 399.809 to 399.812; and in the Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 to 15.246.
- Break up R 340.1353(2) into 2 subrules, add clarity about notice that the department is granting a request for promulgation of a rule, and align new R 340.1353(3)(b) with MCL 24.238.
- Rescind R 340.1354 because it duplicates the FOIA, and amend the title of the rule set to reflect this action.

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

The superintendent of public instruction has promulgation authority for the rules.

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

The superintendent of public instruction has promulgation authority under sections 33 and 63 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.233 and 24.263, and Executive Reorganization Order No. 1996-6, MCL 388.993.

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

The rules describe procedures for requesting declaratory rulings and for requesting the promulgation of rules. MCL 24.233 requires the Department of Education to promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests. This includes the procedure for requesting promulgation of a rule under MCL 24.238. MCL 24.263 requires the Department of Education to prescribe by rule the form for requests for declaratory rulings and the procedure for submission, consideration, and disposition of requests for declaratory rulings.

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.

As amended, the rules will 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?

Matters related to requests for public records under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, are addressed in the Department of Education's FOIA procedures and guidelines, which are available on the Department's website. Matters related to the retention of public records are addressed in retention and disposal schedules.

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

The rules are listed on the Department of Education's annual regulatory plan as rules to be processed for 2024-2025.

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?

MCL 24.244 (1)

A. Explain why the rules are being promulgated under 24.244.

The proposed rules will be promulgated under Section 44 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.244, because the amendments are for the purely formal purposes of updating contact information and delivery options to align with current practice and to ensure notification of interested parties, rescinding language that is superseded by statutes, and conforming with current standards of drafting.

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.