

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

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Michigan Office Of Administrative Hearings and Rules

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Michigan Office of Administrative Hearings and Rules Administrative Hearing Rules

5. Rule numbers or rule set range of numbers:

R 792.10101 – R 792.11027a, R 792.11102, R 792.11201 – R 792.11611, R 792.11901 – R 792.11903

6. Estimated time frame:

12 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 19-part rules set is 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 Among the provisions and rules to be amended or rescinded are as follows: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: 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: 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 3: The proposed changes update the title of the department (reorganized as the Department of Environment, Great Lakes and Energy) and add language regarding petitions to the Environmental Permit Review Commission created under section 1313 of act 268 of 2018, MCL 324.1313.

Part 4: 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 5: The proposed change ensures consistency with the definitions section and eliminates reference to MOAHR's predecessor name, Michigan Administrative Hearing System.

Part 6: At the agency's request, Part 6 of the rules set (Rules 601 through 609) will be rescinded and deleted to eliminate duplication with the MOAHR general rules and certain statutory changes in the subject area.

Part 8: The proposed changes add Bureaus (Bureau of Professional Licensing and Bureau of Constructions Codes) to be included in the Section, update a referenced statute, and provide a process for a petition to dissolve a summary suspension order.

Part 9: The proposed changes update the title of the department (reorganized as the Michigan Department of Health and Human Services), rescind a duplicative rule on declaratory rulings, and incorporate the formal hearing provision promulgated under the former Dept. of Community Health.

Part 10: The proposed changes update the title of the department and incorporate rules on hearings that were promulgated by the former Department of Human Services under its separate statutory authority. The proposed changes also include revisions to make the rules consistent with new federal regulations and to clarify the process for good cause requests to vacate a dismissal order and continue a hearing, and to request a rehearing or reconsideration. The proposed changes also address hearing requests related to the over-issuance of benefits, child foster care facility licensing, and expunction cases.

Part 11: The proposed changes update the name and references of the "Department" to Labor and Economic Opportunity in the definitions section.

Part 12: The proposed changes add references to the Paid Medical Leave Act, "notice of violation" procedures, and authorized representation at a hearing.

Part 13: Rescind.

Part 14. The proposed changes update the name and references to the Unemployment Insurance Appeals Commission (formerly the Michigan Compensation Appellate Commission). The proposed changes also address subpoena authority, development of the record, and rehearing and reopening requests. At the agency's request, the proposed changes also rescind and delete Rules 1417 through 1433 to eliminate duplication with the MOAHR.

Part 15: The proposed change ensures consistency with the definitions section with respect to reference to the hearing system.

Part 16: The proposed change corrects the spelling of "retirement" in Rules 1601(2)(f) and 1609 (1).

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

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

By authority conferred on the executive director of the Michigan office of administrative hearings and rules.

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

Executive Reorganization Order (ERO) Nos. 2005-1, 2011-4, and 2011-6, and the Michigan office of administrative hearings and rules by EO No. 2019-6 and EO 2019-13, MCL 445.2021, 445.2030, 445.2032, 324.99923, 125.998, and section 33 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, as well as the following provisions applicable to specific practice areas.

Part 1: ERO 2005-1, MCL 445.2021.

Part 2: sections 32 and 49 of 1973 PA 186, MCL 205.732 and 205.749.

Part 3: sections 2233, and 13322 of 1978 PA 368, MCL 333.2233 and 333.13322; ERO Nos. 1997-2 and 1998-2, MCL 29.451 and 29.461; parts 31, 33, 41, 55, 63, 111, 115, and 201 of 1994 PA 451, MCL 324.101 to 324.90106; and ERO No. 1995-16, MCL 324.99903.

Part 4: section 7 of 1909 PA 106, MCL 460.557; section 2 of 1909 PA 300, MCL 462.2; section 5 of 1919 PA 419, MCL 460.55; article 5, sections 6 and 6a of 1939 PA 3, MCL 460.6 and MCL 460.6a, article 5, section 6 of 1933 PA 254, MCL 479.6; and ERO No. 2015-3, MCL 460.21.

Part 5: section 675, 1949 PA 300, MCL 257.675; section 5 of 1969 PA 200, MCL 247.325, and section 23 of 1972 PA 106, MCL 252.323.

Part 6: section 210 of 1956 PA 218, MCL 500.210.

Part 8: section 308 of 1980 PA 299, MCL 339.308, and ERO Nos. 1996-1 and 2003-1, MCL 330.3101 and 445.2011.

Part 9: sections 6 and 9 of 1939 PA 280, MCL 400.6 and 400.9; and sections 2226 and 2233 of 1978 PA 368, MCL 333.2226, and 333.2233.

Part 10: section 6 of 1939 PA 280, MCL 400.6; and ERO Nos. 2005-1, 2011-4, 2015-1, and 2018-6, MCL 445.2021, 445.2030, 400.227, and 722.110.

Part 11: section 46 of 1974 PA 154, MCL 408.1046.

Part 12: section 12 of 1978 PA 390, MCL 408.482, and section 7(3) of 2018 PA 338, MCL 408.967.

Part 13: section 213 of 1969 PA 317, MCL 418.213, and ERO Nos. 1996-2, 2002-1, and 2003-1, MCL 445.2001, 445.2004, and 445.2011.

Part 14: section 34 of 1936 PA 1, MCL 421.34, and ERO Nos. 1996-2, 2003-1, 2011-4, 2011-6, MCL 445.2001, 445.2011, 445.2030, and 445.2032.

Part 15: sections 7, 9a and 27 of 1939 PA 176, MCL 423.7, 423.9a, 423.27, sections 12 and 14 of 1947 PA 336, MCL 423.212 and 432.214; and ERO Nos. 1996-2, 2011-4, and 2011-5, MCL 445.2001, 445.2030, and 445.2031.

Part 16: section 2 of 1943 PA 240, MCL 38.2.

Part 19: section 6 of 1953 PA 232, MCL 791.206

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

The following MCLs mandate rule promulgation: MCL 205.749, 333.13322, 324.3131, 324.5504, 324.5505, 324.5506, 324.5507, 324.5509, 324.5512, 324.11114, 324.11127, 324.11508, 324.11538, 324.11547, 324.20139, 460.6a, 479.6, 247.325, 500.210, 339.308, 408.1046, 423.7, 432.214.

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 proposed rules set will not conflict, duplicate or exceed similar regulations, compliance requirements or standards, but will instead comply with all current statutory requirements for hearings conducted by MOAHR.

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

No.

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 proposed rules set will not conflict, duplicate or exceed similar regulations, compliance requirements or standards, but will instead comply with all current statutory requirements for hearings conducted by MOAHR.

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

No.

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.

This rules set was last reviewed in 2018. The administrative hearings process (the regulatory activity covered by this rules set) has improved from a technological standpoint with electronic filing and remote video and telephone hearing capabilities but otherwise remains unchanged. The process has also changed due to the transfer of certain aspects of the process from MOAHR to other agencies by executive reorganization order(s).

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?

No.

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