

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:

2024-18 ST

Title of proposed rule set:

Conduct of Election Recounts

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.

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

These rules are required by state law. MCL 168.889 requires the Board of State Canvassers to provide “such rules and regulations” as the Board deems necessary. The Board initially promulgated these rules in 1979.

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.

There are no similarly situated states with similar rules; accordingly, the agency did not compare the proposed rules to standards in other states given that the laws and regulations are specifically tailored to the State of Michigan’s recount procedures. Any differences between the proposed rules and those in other states are not affected by geographic location, topography, natural resources, commonalities, or economic similarities, as those are not relevant to decisions regarding recounts of elections.

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 given that the laws and regulations are specifically tailored to the State of Michigan’s recount procedures. The agency is not aware of a similarly situated state that has the same procedures the rules are attempting to regulate.

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

The Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992, specifically Chapter XXXIII addressing Recounts, MCL 168.861 to 168.894, is a law that partially overlaps with the rules; however, the rules provide clarification to these statutory provisions and incorporate applicable definitions into the rules. No laws or rules completely overlap with or duplicate the rules. Existing instructions from the agency, specifically, the instructions issued for the recounts related to Proposal 2022-2 and 2022-3, might be considered a legal requirement that overlaps with or duplicates these rules; however, these instructions were specific to one recount and are not broadly binding in all situations so these rules seek to mirror these instructions. No laws, rules, or other legal requirements 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.

Purpose and Objectives of the Rule(s)

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

Any candidate or other interested person may petition for a recount of any election, provided statutory requirements are met. Michigan has three dates for regular elections annually (in May, August, and November), a date for a presidential primary (in February) every four years in the presidential election year, and special primaries and special elections as needed. MCL 168.641, MCL 168.631. In 2024, Michigan will have six election dates. The rules clarify and update the procedures applicable to election recounts to account for current legal requirements and technology.

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

It is not anticipated there would be a change given that the frequency of elections will not change.

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

The proposed rules seek to codify current practice. The current rules were promulgated in 1979 and have not been amended. They were promulgated before the use of electronic voting systems, before early voting was an option, they use outdated terminology, and they provide for some outdated processes.

C. What is the desired outcome?

Once the proposed rules are adopted, the rules will reflect current technology and practice and provide clarity to election administrators and the public about how a recount is properly conducted.

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 current rules contemplate some processes that are not in line with the Michigan election law, for example, the current rules include procedures based on former MCL 168.802, which was repealed by 2018 PA 120, effective 12-31-18, and former MCL 168.737, which was repealed by 2012 PA 128, effective 5-14-12. The current rules are repetitive, use outdated terminology, and reference old technology that is no longer used. If the rules are not updated to match current legal requirements and practice, it may cause confusion for recount staff, undermine confidence in recount results, and invite legal action against the agency.

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

As described above, the current rules use outdated terminology, describe processes that are no longer in use, fail to address early voting, provide for processes that are no longer supported by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, and do not account for new technology.

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 would reflect current practice, provide clarity to clerks and election officials responsible for overseeing the safe and efficient administration of election recounts, bolster the public's confidence in recounts, and alleviate the possibility of confusion and conflict; this protects citizens' welfare as it is important for us all to have confidence in elections. They are not burdensome to comply with as they reflect current practices.

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

The proposed rules rewrite some obsolete or unnecessary sections of the ruleset instead of rescinding them, specifically, R 168.908, R 168.909, R 168.910, and R 168.912. The proposed rules rescind R 168.907, R 168.909a, R 168.913, R 168.914, R 168.918, R 168.919, R 168.920, R 168.921, R 168.924, R 168.925a, and R 168.926.

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 the rules will have a fiscal impact on the agency promulgating the rules or the Department of State.

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, as it is not anticipated that the Department of State 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 will codify current practice and are not expected to place any additional fiscal or administrative burdens on individuals.

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.

The estimated increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of these rules is zero. The estimated cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of these rules is zero. There should be no need for other state or local governmental units to purchase any equipment, supplies, labor, or increase their administrative costs in both the initial imposition of these rules and any ongoing monitoring as a result of these rules; accordingly, we estimate that these rules will impose no costs for state or local governmental units. We also estimate that these rules will not reduce costs for state and local governmental units. We estimate that these rules will not affect costs in any way.

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

The proposed rules do not change any duty or responsibility imposed upon any city, county, town, village, or school district. While county, city, and township clerks have duties relevant to election recounts, the proposed rules do not alter the duties that they have.

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.

It is not anticipated that governmental units would need to take any additional actions under the proposed rules.

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.

An appropriation has not been made because additional expenditures associated with the rules are not anticipated.

Rural Impact

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

The proposed rules are not expected to specifically impact rural areas; the proposed rules apply to all areas in the same way.

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

The proposed rules should have no impact on public or private interests in rural areas.

Environmental Impact

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

The proposed rules will not have an impact on the environment.

Small Business Impact Statement

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

The proposed 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.

The proposed rules do not apply to small businesses.

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

The proposed rules do not apply to small businesses.

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 apply to small businesses and will not have an impact on their reporting requirements.

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, as the proposed rules do not apply to small businesses.

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 performance, 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 is no disproportionate impact on small businesses because the proposed 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.

There are no estimated costs for small businesses, as the proposed rules do not apply to small businesses.

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 costs of compliance, as the proposed 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 for small businesses, as the proposed 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.

There are no estimated costs for small businesses, as the proposed rules 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 are no estimated costs to the agency for administration or enforcement against small businesses, as the proposed 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.

The proposed rules do not apply to small businesses, so there should be no impact on the standards of compliance.

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

The agency has not involved small businesses in the development because the proposed rules do not apply to small businesses.

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

No small businesses were involved because the proposed rules do not apply to small businesses.

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

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

It is not anticipated that there will be any statewide compliance costs.

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

Clerks, election officials, and parties petitioning for a recount will directly benefit from the proposed rules as they will have clear guidance on the administration of election recounts. It is not anticipated that clerks, election officials, or parties petitioning for a recount will bear any additional costs from the proposed 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 costs imposed as a result of the proposed rules. It is anticipated that the rules can be followed with the current funding appropriated to clerks and election officials.

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.

It is not anticipated that there will be any actual compliance costs of the proposed rules on individuals.

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

Clerks and election officials would potentially be affected by the proposed rules, as they will use the rules for guidance if an election they are responsible for is subject to a recount. There are 1,604 clerks and hundreds of election officials and election inspectors who administer elections in Michigan. Members of the public would also be able to use the rules to understand how recounts work.

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

Clerks, election officials, and the public would rely on the proposed rules when conducting an election recount; this is something they already do, but the proposed rules update the current rules to bring them in line with the law, current practice, current technology, and current terminology. It is not anticipated that the rules would have a quantitative impact.

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

There are no cost reductions for 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.

The proposed rules update the current rules to bring them in line with the law, current practice, current technology, and current terminology, which will promote accurate, efficient, and fair election recounts. It is not anticipated that the rules would have a quantitative impact.

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

The proposed rules will not impact business growth and job creation 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 anticipated that 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 upon the Department of State's current practice, as well as comments provided by county, city, and township clerks. The agency relied upon agency staff and its regulatory experience to formulate estimates and assumptions and determine the need for the proposed rules.

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 looked to local elections officials and clerks' associations and relied on their expertise for feedback. Because the proposed rules will codify current practice, the agency can reasonably assume their implementation will not cause any major change to the way recounts are conducted. The agency assumes that having the administrative rules reflect current law, practice, technology, and terminology will be beneficial and eliminate any confusion that currently exists around how to conduct a recount, and it assumes that having accurate rules that reflect current practice will promote public confidence in recounts.

Alternative to Regulation

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

In order to create a safe, secure, and responsible system, there is no reasonable alternative to achieve the same or similar goals.

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

There are no statutory amendments because in order to create a safe, secure, and responsible system, there is no reasonable alternative to achieve the same or similar goals.

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. Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992, 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 these purposes that is utilized in other states.

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. Significant provisions of the proposed rules are intended to codify the current practices. The agency solicited feedback from clerks and incorporated suggestions and revisions to the proposed rules.

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 persons of requirements and methods of compliance.