

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:

2022-64 ST

Title of proposed rule set:

Electronic Return of Absent Voter Ballots by Eligible Voters

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?

Yes. Promulgation of the rules is required by MCL 168.759a, as amended by 2022 PA 197: "The secretary of state shall promulgate rules that establish policies and procedures for the electronic return of voted ballots by eligible members. ... The secretary of state may develop and maintain a secure web portal on the secretary of state's website to facilitate the electronic return of voted ballots by eligible members." MCL 168.759a(17).

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.

According to the National Conference of State Legislatures, at least eight states allow Uniformed and Overseas Civilian Citizens Absentee Voting Act (UOCAVA) voters to return a voted absentee/mail ballot through an online portal (Alabama, Arizona, Colorado, Missouri, North Carolina, North Dakota, South Carolina, and West Virginia). Many states also allow return by fax or email. None of the states that allow electronic return through an online portal are similarly situated to Michigan based on geographic location, topography, natural resources, commonalities, or economic similarities. Indiana, which is the only similarly situated state to Michigan that allows electronic return, allows electronic return by UOCAVA voters by email. The agency's proposed rules would similarly allow military voters to return their ballot electronically, but through an online portal rather than via email.

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

The proposed rules require return of ballots electronically through a secure online portal instead of simply attached to an email; thus, this requirement could be considered to exceed the standards in Indiana because it requires a voter to log into a portal and have their identity verified rather than just relying on email. The reason for exceeding that standard is to ensure the security of the voted ballot by stronger identity proofing and minimizing the chances of a cybersecurity violation or other tampering by bad actors. Another reason to exceed the standard in Indiana is that the use of a portal allows for consistent and accurate communication and ballot tracking. Thus, the benefit of exceeding the standard is a more efficient and secure ballot delivery and return method, and the cost is \$1,450,000 for five years to build and maintain the electronic return portal.

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

There are no laws, rules, or other legal requirements that duplicate or conflict with the proposed rules. Provisions of the Michigan Election Law governing absent voters overlaps with the subject matter of the rules but not any of the rules themselves and federal laws providing protections to military and overseas voters also could be said overlap with the subject matter of the rule but not any of the rules themselves.

Relevant Michigan laws are MCL 168.758 to MCL 168.769a.

Relevant federal laws are: Uniformed and Overseas Citizens Absentee Voting Act and the Military and Overseas Empowerment Act.

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 any local laws as there are none applicable to the same activity or subject matter. The rules incorporate and mirror the legal requirements set out in state law and federal law that govern absent voters and military voters. The agency avoided duplication of the relevant state and federal laws by incorporating them by reference and not repeating the legal requirements already established under those laws.

Purpose and Objectives of the Rule(s)

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

2022 PA 195 required the Secretary of State (SOS) to promulgate rules that establish policies and procedures for the electronic return of voted ballots by eligible voters. Accordingly, the behavior the rules are designed to alter is the way that ballots can be returned by voters who are eligible to return ballots electronically. Under the rules, eligible voters could electronically return voted ballots via a secure web portal developed and maintained by SOS.

The proposed rules would allow for electronic return by eligible voters and the development and maintenance of the portal. Once established, the portal would exist continuously, and eligible voters and election officials would use it as needed before state and local elections.

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

The anticipated ease in voting may result in an increase in participation in elections by eligible voters. Because electronic return is not currently available, the frequency in electronic return would increase substantially.

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

Since 2009, the federal Military and Overseas Empowerment Act (MOVE Act) and corresponding state legislation have allowed Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters to be sent their ballots via email or mail and have required that their ballots be available 45 days before Election Day. While MOVE ballots may be sent to eligible voters electronically, voted ballots may only be returned via postal mail. Voted ballots must be postmarked by 8pm on Election Day and received within 6 days after Election Day. The rules would establish a process allowing eligible voters to return their voted ballots electronically.

C. What is the desired outcome?

The desired outcome is to establish a secure process allowing eligible voters to return their voted ballots electronically.

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.

Failure to implement the proposed rules will be in violation of MCL 168.759a, as amended by 2022 PA 197. Further, if the rules are not promulgated clerks and voters will lack guidance about the electronic return of ballot process.

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

There are no pre-existing rules to modify.

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 establish a process allowing eligible voters to return their voted ballots and would provide clarity and guidance to the clerks responsible for processing the returned ballots, thus reducing the possibility of confusion and conflict. The proposed rules do not impact health and physical safety. The proposed rules protect the safety of voter's data by making sure the electronic return system is secure and protects the welfare of Michigan citizens by allowing eligible voters to return their voted ballots while promoting a regulatory environment that is the least burdensome for those required to comply because the proposed rules only require what is necessary under law.

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

There are no obsolete or unnecessary rules in the rule set that can be rescinded because these rules create a new rule set and there is no existing rule set.

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).

The contract with the vendor who is building the electronic return portal is \$290,000 a year. While the rules themselves do not impose this fiscal impact directly, they are being promulgated "to implement" MCL 168.759a(17), which requires the secretary of state to "establish policies and procedures for the electronic return of voted ballots by eligible members," and the \$290,000 a year contract with the vendor is necessary to facilitate electronic return.

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 specific agency appropriation has been made for these proposed rules as federal Help America Vote Act (HAVA) funds will be utilized for this project.

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 required to meet the statutory requirements of MCL 168.759a, as amended by 2022 PA 197, and are designed to minimize any potential burden on eligible voters and election officials by making it easier to return a voted ballot. The rules do not require any duplicative acts by any individuals and are not expected to place any additional fiscal or administrative burdens on individuals. There is federal Help America Vote Act (HAVA) funding to cover additional costs.

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 significant expected burdens on individuals and the rules are needed and reasonable because the ability for eligible voters to return voted ballots electronically is required under MCL 168.759a, as amended by 2022 PA 197.

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 revenue to other state or local governmental units. There are no estimated increases or reductions in cost to other state or local governmental units. The estimated cost of equipment, supplies, labor, and administrative costs in either the initial imposition or any ongoing monitoring is zero – there are no anticipated costs.

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

Michigan election officials administering elections in jurisdictions with eligible voters will be responsible for using the portal established under the proposed rules to electronically send and receive ballots.

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.

To be in compliance with the proposed rules, Michigan election officials administering elections in jurisdictions with eligible voters will be required to use the portal established under the proposed rules to electronically send and receive ballots to eligible voters. The use of this portal will be a minor change in operational practices as these officials currently use different means to send ballots to eligible voters. There will be no additional 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.

An appropriation has not been made because additional expenditures by other state or local governmental units 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 impact rural areas.

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.

Small businesses will not be governed or impacted by the proposed rules so the agency did not consider 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 in relation to small businesses.

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

The proposed rule set will have no impact on 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.

The proposed rule set will have no impact on small businesses and require no compliance from 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.

The proposed rule set will have no impact on small businesses and require no legal, consulting, or accounting services on behalf of 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.

The proposed rule set will have no impact on 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.

The proposed rule set will have no impact on small businesses and there will be no associated costs.

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

The proposed rule set will have no impact on small businesses.

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

The proposed rule set will have no impact on small businesses.

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

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.

There will be no compliance costs 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.

The rules do not affect businesses or groups in general; the only people the rules affect are election officials who send ballots to eligible overseas voters and the voters themselves and there will be no costs for these people and the benefit is the ability to securely and efficiently send and receive ballots electronically.

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 on businesses and other groups as a result of these proposed rules.

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 immediate cost will be in the application acquisition. Supplemental costs will include the cost for Bureau of Elections (BOE) to create and conduct training in the new application and processes. For the 2024 election cycle, BOE spent approximately 10 hours refreshing the current process for impacted voters. This revision time, combined with a new application will result in 30 days of training requiring 6 trainers each day across the state. Materials can be leveraged with existing technology and resources in the BOE. There will be no costs other than the costs described previously in this answer; accordingly, there will be no costs to regulated individuals or the public.

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

Military voters (currently, at least 2,500 in Michigan), 1,604 local clerks, and BOE staff will be impacted.

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

The qualitative impact is that the proposed rules are required to be promulgated by MCL 168.759a in order to allow for the electronic return of military ballots. The proposed rules would create a uniform regulatory structure and codify security measures required by the statute. It is not anticipated that this will 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.

The rules are not expected to result in any cost reduction to businesses, individuals, groups or individuals, or governmental units.

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 ruleset will lead to decreased processing times for reviewing eligible MOVE ballots and accessible ballots. Currently the ballot proofing process for MOVE and accessible ballots takes BOE staff 2 weeks and requires DTMB support for 1 week. This proposed ruleset should decrease that time. Clerks will also have more lead time to prepare to send out both MOVE and accessible ballots which can increase compliance and potentially decrease balloting errors, reprints, and reissues. The proposed ruleset will also provide a method for eligible voters to return their ballots electronically, therefore allowing greater participation by these voters.

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. The proposed rules will not impact job 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.

There are no individuals or businesses who will be disproportionately affected by the rules.

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's current practice, comments provided by city and township clerks, and current procedures used by local clerks. The agency relied upon agency staff and its regulatory experience to formulate estimates and determine the need for the proposed rules in conjunction with the statutory mandate for promulgation. The agency relied on the terms of the contract it has with the vendor.

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 need for the proposed rules comes from the statutory mandate to promulgate them. Estimates were made based on agency staff and its regulatory experience, and the agency did not make any assumptions when making estimates. Other than the terms of the agency's contract with the vendor, no specific sources, published reports, or information provided by associations or organizations, etc. was relied upon to demonstrate a need for the proposed rules because the rules are mandated by statute.

Alternative to Regulation

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

There are no reasonable alternatives to the proposed rules because the agency is required to promulgate the proposed rules under statute.

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

There are no anticipated statutory amendments that may be necessary because there is no alternative to promulgating these rules due to the statutory mandate to promulgate them - if the statute requiring the rules was amended to not require the rules, then the agency could consider alternatives.

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.

There are no private market-based mechanisms available to address the needs covered by the proposed rules. No other states utilize private market-based systems for receiving voted ballots from overseas military voters.

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.

The agency is mandated to promulgate rules on security measures under statute. As part of this process, the agency spoke with other states' elections offices with similar statutory requirements and the Department of Justice in order to determine best practices and determine the most appropriate way to implement the election law's requirements. No significant alternatives were discussed as the Michigan Election Law requires promulgation of rules and procedures.

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.