

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:

Labor and Economic Opportunity

Bureau name:

Workers' Compensation Agency

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2019-129 LE

Title of proposed rule set:

Workers' Disability Compensation Appeals Commission General Rules

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.

None exist. However, each state develops its own set of rules & standards, and federal employees are covered under their own set of rules. The states do share ideas on standards and industry trends via an organization called International Association of Industrial Accident Boards and Commissions (IAIABC) whose mission has been to work to improve and clarify laws, identify best practices, develop and implement standards, and provide education and information sharing. The IAIABC strives to gather the best resources available to solve the practical administrative and regulatory challenges of its members.

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

MCL 418.205 provides for the agency director to make rules to carry out the provisions of the Worker's Disability Compensation Act of 1969 (MCL 418.101 to 418.941).

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.

There are no applicable federal standards.

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

The Michigan rules, along with our statute, have resulted in Michigan WC costs being among the lowest in the nation. These rule changes and updates do not exceed standards in those states.

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

These rule changes and updates do not exceed standards in those states.

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

There are none identified.

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.

This is not applicable as there are no other applicable federal, state, or local laws.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

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

The rules in this subpart apply to practice and procedure before the Michigan compensation appellate commission in appeals under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941 and are governed by R 792.11301 to R 792.11321. Parties are to adhere to these procedures whenever practicing in front of the Workers' Disability Compensation Appeals Commission. There are several new and updated areas within the rules that are meant to streamline the process for customers and provide better definition of procedures such as Motion Practice, Briefing Deadlines and Cross Appeals.

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

The change in the frequency of the behavior change should be immediate and daily or whenever a party is in front of the appeals commission.

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

There is not much difference. The ruleset simply needs to be updated. The only difference would be assisting customers through the system in a more expedient fashion.

C. What is the desired outcome?

The desired outcome is enhanced appeals services.

7. 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.

Without these rules in place, all parties in the appeals process would struggle to understand procedure which could delay the process for all including the injured employee ultimately delaying payment of workers' compensation benefits owed.

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

Due to the reorganization of the WDCA, and the Board of Magistrates and newly created WDCAC in Executive Order 2019-13, the BofM and WDCAC rules can no longer be part of the rules being enacted for the Office of Administrative Hearings and Rules. Additionally, the WDCA is establishing an electronic document filing process and hearing rules need to accommodate and take advantage of that system. The existing rules also address application of video technology to the hearing process which is being adopted by other jurisdictions throughout the judicial and administrative law world.

8. 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 rule changes are intended to keep the appeals process flowing in a consistent and standardized method that intends to apply the law as expeditiously as possible in order for claimants to obtain orders that provide direction regarding their compensation benefits. This is not intended to be a burden, but a relief to a claimant awaiting their benefits owed and will reduce employer cost through limiting court appearances.

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

Due to the EO 2019-13 reorganization, these rules will replace all existing rules.

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.

10. 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 proposed rule changes which will accommodate electronic filing and document handling which are expected to result in administrative savings in terms of enhanced handling of case filings. Existing staff is sufficient to handle the changes.

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

There are no expenditures specifically associated with these proposed rules. Existing staff is sufficient to handle the changes.

12. 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.

There are no identified burdens.

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

13. 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 rules do not increase operational costs for any of the involved entities.

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

There are no anticipated additional programs, services, duties, or responsibilities imposed upon these types of entities, other than what is expected from any carrier or self-insured employer when managing workers' compensation claims. All providers, carriers, attorneys and self-insured employers are to follow the BOM rules when navigating the hearings process as they have for many years prior to this draft.

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.

There are no anticipated changes to existing program, service, or duty responsibilities imposed upon governmental units.

15. 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.

There is no appropriation needed for additional expenditures for this rule set.

Rural Impact

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

This rule set does not specifically impact or target rural areas.

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

No anticipated impact on public or private interests in rural areas.

Environmental Impact

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

There is no impact on the environment.

Small Business Impact Statement

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

Since the size and type of business is not specifically targeted with these rule changes, the agency did not consider exempting small businesses from these rules.

19. 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.

Business size is not an element in the handling of WDCA claims. Employer costs for coverage do take into account the number of employees, their wages and benefits, and the types of jobs performed.

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

There are over 230,000 businesses in Michigan privately covered by workers' compensation insurance. An additional 10,000 employers are classified as self-insured. Also affected are 200 plus insurance carriers, 400 individual and group self-insured carriers, and 26 service companies. The rules will also impact attorney firms and facilities which impact on small businesses as a result of these rule updates.

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 agency did not and cannot establish differing compliance or reporting requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

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.

There are no reporting requirements with these amendments, so the agency did not consider any consolidation specifically for small or large businesses.

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

The agency did not and cannot establish differing compliance or reporting requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

20. 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 identified.

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

Reporting is done by carriers and costs cannot be identified. There are no filing or processing fees for statutory or regulatory filing requirements.

22. 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 is no additional cost for compliance including costs for equipment, supplies, labor, and increased administrative costs for small businesses.

23. 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 additional costs of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

24. 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 additional costs small businesses have to absorb thereby causing economic harm to them as a result of these rule changes.

25. 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 additional costs to the agency because the agency did not and cannot establish differing compliance or enforcement requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

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

These rules apply to all businesses no matter the type or size and none are exempt so it is difficult to identify what might happen with lesser standards.

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

A special committee of the State Bar, Workers' Compensation Section, with counsel representing all stakeholders, was convened, and provided bi-partisan input in the drafting of rules.

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

No specific businesses were identified. Rather, counsel representing various businesses participated in the committee.

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

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

No additional estimated compliance costs due to the amendments are anticipated.

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

Attorneys; claims adjusters; carriers; self-insured employers and third-party administrators.

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.

These rules are meant to provide simplified case preparation and more efficient resolution of disputes thereby benefiting all parties in the hearings process. No additional costs will be imposed on businesses or other groups as a result of these proposed rules.

29. 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.

No additional compliance costs are expected with the new rules.

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

As of this writing, there are some 7,000 cases pending before the Board of Magistrates and 40 before the Appeals Commission. Each case typically has one plaintiff and one employer. There may, however, in any given case, multiple dependents on the employee side of the case and, in some instances, multiple employers on the other. Law firms representing both sides, typically handle numerous cases so it is impossible to identify how many total individuals will be involved.

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

These rules are meant to provide simplified case preparation and more efficient resolution of disputes thereby benefiting all parties in the appeals process.

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

There should not be any significant cost reductions to businesses or government units as a result of these proposed rules.

31. 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.

Process efficiency and effectiveness for all parties.

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

These rules do not have any direct impact on business growth and job creation.

33. 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 will be no 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.

34. 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 director relied upon a multi-faceted workgroup consisting of the Chief Magistrate and the WDCAC Chairperson along with other internal agency experts (SME's).

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.

New rules were required as a result of the EO 2019-13 reorganization as well as the new availability of electronic filing and video technology as a means of alternative hearings. No estimates were made.

Alternative to Regulation

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

There are no other reasonable alternatives to this proposed rule set.

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

There are no amendments needed.

36. 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.

This is not feasible. The agency is bound by statute to provide operating rules for the parties relating to the appeals process.

37. 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.

There are no significant alternatives.

Additional Information

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

Detailed instructions are found on the agency's website as necessary: www.michigan.gov/wdca.