

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

[AMENDED]

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2012-115 LR

ORR rule set title:

Michigan Administrative Hearing System—Part 2. Appeals to an Administrative Law Judge

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Michigan Administrative Hearing System

Name and title of person completing this form; telephone number:

Christopher Seppanen; 517-373-3434

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim

Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There are no Federal rules or standards that exist regarding notice requirements or telephone hearings.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

Many states have adopted telephone unemployment hearings as the standard method of holding unemployment hearings. Holding the hearing telephonically allows for more flexibility in coverage of last minute absences. It also allows for reduction in office space and associated costs.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has 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.

None

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The current practice is to hold approximately 30% of unemployment hearings by telephone, with the remainder being held in person in various locations throughout the state. Changing the standard to telephonic rather than in-person hearings relieves claimants and employers from having to travel to the hearing site.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

The proposed rule changes will increase the flexibility in scheduling unemployment hearings, allowing the Agency to increase the timeliness of our hearing decisions, increasing our ability to meet the Federal timeliness standards.

(6) Describe how the proposed rule(s) 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 change relieves the claimants and employers of having to travel to the hearing site. Changing the standard method to telephone hearings decreases the amount of time parties and witnesses need to devote to the hearing process.

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

None

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, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or 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 on the agency promulgating the rule).

Moving toward a telephonic based hearings system permits the Agency to reduce traditional in-person office locations resulting in the elimination of private lease expenditures.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

N/A

Impact on Other State or Local Governmental Units:

(10) 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 on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

There will be no increase or decrease in revenues to any other state of local governmental units.

(11) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rule changes will impose no additional responsibilities on any city, county, town, village or school district.

(12) 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 rule(s).

The proposed rule changes will not require an appropriation.

Rural Impact:

(13) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The proposed changes will allow both claimants and employers who live in rural areas to participate in their unemployment hearings by telephone reducing a lengthy drive and the associated costs to a hearing location.

Environmental Impact:

(14) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The proposed changes will have no impact on the environment.

Small Business Impact Statement:

[Please refer to the discussion of “small business” on page 2 of this form.]

(15) Describe whether and how the agency considered exempting small businesses from the proposed rules.

As small businesses are not exempt from unemployment insurance, they cannot be exempted from the proposed rule changes. The proposed changes are intended to create a more efficient process thus benefiting all parties involved in the unemployment appeals system.

(16) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) 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 rule(s) 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 have a disproportionate economic impact on small businesses. The proposed change to telephone hearings will reduce the amount of time claimants and employers need to devote to traveling to and from the hearing location.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

All employers paying unemployment insurance are equally impacted by the proposed rule changes. The rule will not have a disproportionate impact on small business.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rule changes do not place any reporting requirements on employers.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

The proposed rule does not affect any compliance or reporting requirements.

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

The proposed rule changes do not impose performance standards on employers.

(17) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rule change to telephone hearings will allow more remote employers to participate in the unemployment hearing process without incurring travel costs.

(18) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

There will not be any additional business reporting requirements imposed by these rule changes.

(19) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There will not be any additional costs imposed on small businesses.

(20) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The proposed rule changes will not result in increased legal, consulting, or accounting services to small businesses.

(21) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There will not be any additional costs imposed on small businesses.

(22) 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 change does not exempt or set lesser standards for compliance of small businesses.

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

The proposed rule change does not exempt or set lesser standards of compliance for small businesses.

(24) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

The Agency does not anticipate a disproportionate impact on businesses of any size, thus we have not requested comment on the proposed rule change.

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

(25) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). 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.

The proposed rule changes deal with conduct and timing of unemployment hearings. The operation is funded through Federal funds. The rule change is intended to increase efficiencies in the unemployment hearing process, lessening the regulatory burden. There will not be increased costs imposed on businesses. Businesses of all sizes will benefit from conducting unemployment hearings by telephone.

(26) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

There are no increased costs on individuals. Individuals will benefit from not incurring travel expenses to appear in person at a hearing location.

(27) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Businesses and individuals will not have to incur travel costs to attend hearings. They will also benefit from elimination of time they would devote to travelling to and from the hearing locations.

(28) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The Agency held approximately 40,000 unemployment hearings during calendar year 2011. Assuming 70% were in person hearings, claimants, employers and witnesses had to incur costs in time and travel to participate in approximately 28,000 unemployment hearings. Conducting the hearings by telephone will eliminate the costs associated with travel for all parties and witnesses.

(29) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

Increasing the efficiencies of the unemployment hearing process will have a positive impact on businesses by reducing the costs associated with travel.

(30) 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 not be any disproportionately affected individuals or businesses.

(31) 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 a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The Agency relied upon internal data to examine the current level of participation in telephone hearings. Furthermore, the Federal government through routine audits and meetings has repeatedly suggested a move toward telephonic hearings to increase efficiencies and costs.

Alternatives to Regulation:

(32) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

There are no other reasonable alternatives that would achieve the same or similar goals of increased efficiency and timeliness of the unemployment hearing process.

(33) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The proposed rules regulate procedures associated with unemployment hearings. The U.S. Department of Labor has ruled the unemployment hearings process cannot be a function of private industry.

(34) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

There are no alternatives to the proposed rule changes. The rules are part of the administrative hearings process and protect due process rights. The proposed modifications are designed to increase efficiency in the hearing process, while reducing parties' expenses of travelling to a hearing site.

Additional Information

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

N/A

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

11-8-2012

Date RIS approved:	11-27-2012
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ORR assigned rule set	
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number:	
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Date of disapproval:	Explain:
More information needed:	Explain:

(ORR-RIS October 2012)