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

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:

2013-100LR

ORR rule set title:

Administrative Hearing Rules

Department:

Licensing And Regulatory Affairs (LARA)

Agency or Bureau/Division

Michigan Administrative Hearing System (MAHS)

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

Renee Ozburn

Reviewed by Department Regulatory Affairs Officer:

Liz Smalley

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.

The Michigan Administrative Hearing System (MAHS) is a centralized state agency designed to consolidate administrative state hearing functions, eliminate unnecessary duplication and facilitate the efficient use of state resources for the purpose of providing impartial hearings. MAHS was created by Executive Orders 2005-1, 2005-26 and 2011-4. Previously, hearing functions were separate in various state departments and agencies. Hearings are now performed by cross-trained MAHS administrative law judges who handle varied subject matter cases. There is no longer a need for a large number of agency specific hearing rules. There are no parallel federal rules or comprehensive set of state standards for centralized administrative 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.

Although there are other states that centralize hearing functions, the structures of those systems vary in ways that make a side by side comparison impractical. Further, the proposed MAHS rules for conducting hearings do not deal with issues of geographic location, topography, natural resources, commonalities or economic similarities in a manner that lends itself to a cost and benefit analysis of deviations among the states.

(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.

The primary purpose of the new MAHS rule set is to eliminate unnecessary duplication, overlap and conflict. A number of existing rules with similar or identical intent have been consolidated and incorporated into the new MAHS general rules. Further, a review of existing hearing rules uncovered a number of rules that can be rescinded because they are obsolete or no longer relevant to the administrative hearing process. Although a number of MAHS hearing rules get their authority from or are modeled on the Michigan court rules and the Administrative Procedures Act, having them in one place for purposes of administrative hearings is more efficient.

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 proposed rules are designed to provide guidance on the procedures and practices for participating in an administrative hearing before a MAHS administrative law judge. Having all of the hearing rules in one set should make access easier. These rules are not the type of regulatory rules designed to alter behavior, rather they are intended to bring consistency to the legal processes of administrative hearings and facilitate understanding of the practice expectations for both lay and legal participants.

The use of technology is one facet of the rules that will make the administrative hearing system more user friendly by codifying procedures for telephone participation and electronic filing. These examples will also reduce costs, such as fuel, time off from work and childcare costs, to both parties and the state because it will no longer be necessary to travel, sometimes long distances, to participate in a hearing.

(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?

Although the rules are not specifically designed to alter behavior, without the new rules there are numerous conflicting, duplicative and irrelevant rules that do not aid parties to MAHS hearings and may confuse parties. Further, without rule authority for electronic filings and telephone or video-conferencing parties may still be required to travel unnecessarily or assume the costs necessary to transmit documents using postal services. Hearings are also less likely to be adjourned because of issues that arise from trying to coordinate in-person participation of parties and witnesses. This will expedite moving the dockets of the judges and provide quicker resolution of issues for the parties.

(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 hearings conducted by MAHS administrative law judges often involve protecting the health, safety and welfare of citizens by addressing violations of licensed professionals (e.g. health professionals, hospital systems, emergency medical personnel, builders) or assuring compliance with safety standards (e.g. MIOSHA or Bureau of Child & Adult Licensing cases involving daycare and adult foster care facilities). In addition, MAHS hearings often involve regulation of services and benefits that protect the disabled, the unemployed or those suffering financial hardships or living in poverty (e.g. unemployment appeals, Bureau of Services to Blind Persons, Department of Human Services benefit hearings,Barrier Free Design hearings). MAHS hearings also protect the environment and services necessary for daily living throughout our communities (e.g. Department of Environmental Quality, Department of Natural Resources, Public Service Commission and Department of Transportation). The welfare of children is enhanced and protected in MAHS hearings (e.g. Special Education, & Department of Human Services expunction). Financial and property concerns of individuals, workers, employers and businesses are protected by MAHS hearings (e.g. Tax Tribunal, Department of Insurance & Financial Services cases, Corporations, Securities and Commercial Licensing cases, Employment Relations cases, Employment Security cases, Wage & Fringe Benefit cases, Workers Compensation cases, Retirement Services cases). With more efficient and user-friendly hearing procedures resulting from the proposed rules, issues involving these protections and benefits will be resolved in a more expeditious manner.

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

Over 300 rules are being recommended for rescission as a result of consolidation effected by the new MAHS general rules. Many of these existing rules duplicate provisions for notice, service, filings, assigning dockets, computing time, location, prehearing conferences, motion practice, stipulations, discovery, consolidation, evidence, responsibilities of the administrative law judge, summary disposition, proposals for decision and rehearing. The proposed MAHS

general rules consolidate these provisions and eliminate the duplication.

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).

Although it is not possible to provide an exact or approximate cost savings, the adoption of the proposed rules for electronic filings will save paper/supply costs and proposed rules increasing telephone and video-teleconferencing hearings will save fuel costs to the state and public and eliminate room rental costs necessitated when administrative law judges must travel across the state to hold hearings.

(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).

No additional expenditures are contemplated from promulgation of the proposed rules.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The consolidation of administrative hearing rules in one set, makes it easier for individuals, businesses and governmental units to access the procedures and practices necessary for participating in a MAHS hearing. With existing hearing rules scattered in hard to find places many members of the legal and non-legal community and members of the private and public sectors generally, are unaware and/or confused about how to proceed in administrative hearings. In addition, to facilitate the effectiveness of the rules, a citation to the proposed rules will be included in all notices of hearing. There are no corresponding 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 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.

Local governmental units may incur fees associated with hearings before the tax tribunal. Although it is not possible to estimate potential savings, the ability to file and serve pleadings and documents electronically in tax cases should offset some of the fee expenses for those litigating matters before the tax tribunal.

(12) 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.

Neither the existing hearing rules nor the proposed rules impose new responsibilities on municipalities. There are no new record keeping, reporting or operational practices necessitated by 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 rule(s).

The new rules do not increase expenditures in a manner that would require appropriations. The few filing fees that may be incurred should be covered by the cost savings of reduced filing and fuel expenses.

Rural Impact:

(14) 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 rules will not have a specific impact on rural areas.

Environmental Impact:

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

The proposed rules will have a positive environmental impact by lessening the proliferation of paper and reducing the use of fossil fuels for traveling.

Small Business Impact Statement:
[Please refer to the discussion of "small business" on page 2 of this form.]

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

Exempting small businesses would not be appropriate because small businesses need access to fair and impartial administrative hearings just as other individuals and entities. Small businesses continue to be subject to existing regulations. In addition, the state maintains the right and obligation to assure compliance with those regulations, often through the administrative hearing process.

(17) 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.

Small businesses are not disproportionately impacted by the MAHS rules and may be assisted by the process as described above.

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

It is impossible to identify small businesses that might need or be subject to a MAHS hearing. If a small business is party to a MAHS hearing, it will reap the same benefits as all other agencies, businesses and individuals from having more streamlined hearing procedures and processes that the proposed rules would provide.

(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.

MAHS is not a regulatory agency and does not impose reporting requirements on small businesses and does not set compliance standards aimed at small businesses.

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

See above. MAHS proposed rules do not impose reporting requirements on small businesses.

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

MAHS rules for administrative hearings do not impose performance standards.

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

MAHS hearing rules will not impact small businesses differently from any other business or individual that becomes a party to an administrative hearing.

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

MAHS hearing rules will not require reports from small businesses.

(20) 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 be no additional equipment, supplies, labor or increased administrative costs to small businesses as a result of MAHS rules. Most small businesses will continue to operate outside of the jurisdiction of MAHS rules for hearings. If a small business becomes a party to a case on a onetime basis, the costs of litigation will depend on the nature of the individual case and cannot be predicted.

(21) 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).

Most small businesses will continue to operate outside of the jurisdiction of MAHS rules for hearings, and no legal, consulting or accounting services will be incurred by the proposed rules. If a small business becomes a party to a case on a onetime or occasional basis, the costs of litigation will depend on the nature of the individual case and cannot be predicted. Under some existing regulations small business owners can represent themselves, some businesses have retained legal counsel and some will need to hire licensed attorneys. There is no legal consideration or cost that would apply in all small business matters before an administrative law judge.

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

See above. There will be no standard or reoccurring costs to small businesses as a result of the proposed rules.

(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.

Exemptions or lesser standards are not necessary for small businesses, so the agency will not incur enforcement costs.

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

Because the MAHS proposed rules address legal procedures and not regulatory compliance standards, there is no need to exempt small businesses and there is no public interest served from exemptions.

(25) 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).

There was no reason to single out small businesses for purposes of input in the drafting the legal procedures and practices that will apply equally and impartially to most individuals, public and private entities and small or large 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. 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.

As discussed above, the impact of consolidation and codification of a unified rule set of legal procedures and practices should not significantly impact costs to businesses. The new rules for telephonic and video-conferencing hearings have the potential to save money in individual hearings, as will the new rules allowing electronic filings. But since most businesses or groups will not be impacted by the proposed MAHS rules a statewide costs cannot be estimated.

(27) 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?

The proposed MAHS rules will not result in costs to individuals for education, training, examination, license fees, new equipment, labor, or record keeping.

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

It is impossible to quantify the cost to any specific business, individual or group because it cannot be predicted when and how often they will avail themselves of the MAHS hearing system. However, anyone doing business with MAHS after the proposed rules are in place should encounter a more streamlined, efficient system for proceedings to resolve legal matters. The efficiencies will include less costs overall from reducing the necessity to travel to participate in a hearing and also reduce printing costs due to the availability of electronic transfer of data and documents.

(29) 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.

See above. Providing a centralized system for administrative hearings allows allocation of resources where they are most needed. In the past, an agency might have one or more administrative law judges assigned to do one case type when the actual number of cases progressing to the hearing stage in that agency was minimal. For other case types, there were not enough administrative law judges assigned to handle the hearings caseloads for a particular agency. With cross-trained judges and a centralized system for assigning cases to available judges, dockets move more smoothly and consumers, both public and private, get more timely resolution of issues. The proposed rules also provide a central source to consult procedures and practices for participating in a hearing for all case types before a MAHS administrative law judge. This is particularly helpful for the non-lawyer party, of which there are many in a number of administrative case types. Another direct benefit of the proposed rules are the provisions for using electronic and telephonic technology, which will ultimately reduce litigation costs currently associated with paper generation and travel.

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

The proposed MAHS rules provide flexibility for businesses in the way they can access and participate in the MAHS hearing processes. However, the primary purpose of the rules is to consolidate and streamline legal procedures and practices for all hearing participants. The rules themselves are unlikely to have any significant or measurable impact on business growth and job creation.

(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.

The proposed rule set, and revision of existing rules sets, will not disproportionately affect any individuals or businesses regardless 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 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).

Over 50 individuals and organizations were consulted in drafting the proposed rules. These stakeholders included state agencies, administrative law judges, attorneys general, private law firms, community organizations and business associations. Through this process, concerns about changes and potential impact on both public and private individuals, businesses and interested organizations was considered and addressed. The impact of legal wording, rather than economic concerns, was a primary focus of decisions to draft new rules, revise existing rules or recommend rescission of rules.

Alternatives to Regulation:

(33) 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 reasonable alternatives to consolidation of duplicative rules and elimination of obsolete rules. The option of leaving rules as they are, because that is the 'way it has always been done' does not serve the cause of providing a fair, impartial and efficient hearing system as envisioned by the statutory centralization of administrative hearings in Michigan.

(34) 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.

MAHS functions as an administrative court system, not a regulatory agency. Because of the nature of legal proceedings in our country's jurisprudence system, no private-market based court system is feasible in Michigan or any other state.

(35) 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 reasonable alternatives to consolidation of duplicative rules and elimination of obsolete rules. The option of leaving rules as they are, because that is the 'way it has always been done' does not serve the cause of providing a fair, impartial and efficient hearing system as envisioned by the statutory centralization of administrative hearings in Michigan.

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 contain self-explanatory legal procedures and no further methods of compliance will be necessary.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

7-1-14

Date RIS approved:	**7-1-14**
ORR assigned rule set number:	**2013-100 LR**

Date of disapproval:	Explain:
More information needed:	Explain:

(ORR-RIS March 2014)