

**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:**

Adam Fracassi

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**Rule Set Information:**

**ARD assigned rule set number:**

2021-62 ST

**Title of proposed rule set:**

Online Absent Voter Ballot Application

**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?**

The rules are not required by state law or federal mandate.

**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 an applicable federal standard.

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

The manner of conducting elections differs based upon each of the states' laws and regulations. The State of Virginia has the same procedure for allowing voters to request an absent voter ballot through an online interface. Virginia's system for online submission requires the same information as this rule seeks to include. It does not appear that other states have a specific rule set on this topic.

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

The rules do not exceed standards in other states.

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

There are no laws or rules that duplicate, overlap, or conflict with the proposed rules.

**A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.**

The rules have not been coordinated as there are no other laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rules.

**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.**

Prior to elections, Michigan Election Law requires voters to submit an application requesting to receive an absent voter ballot for the relevant elections. Voters can submit an application every election, or they can submit one application that covers dual elections. The application that is submitted is in paper format. The proposed rule set would codify current practice established in 2020 and allow the voter to submit an application through a portal online that captures the voter's signature on their driver's license and applies it to the application. The frequency would not change because the frequency is dictated by the Election Law.

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

The frequency is not expected to change since applications must be submitted as dictated by the Election Law.

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

Prior to elections, Michigan Election Law requires voters to submit an application requesting to receive an absent voter ballot for the relevant elections. Voters can submit an application every election, or they can submit one application that covers dual elections. The application that is submitted is in paper format. The proposed rule set would codify current practice established in 2020 as a result of the public health pandemic and allow the voter to submit an application through a portal online that captures the voter's signature on their driver's license and applies it to the application.

**C. What is the desired outcome?**

The rule set would codify current practice and allow voters to submit an application online and sign the application using their signature that appears on their driver's license.

**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.**

The rules serve to provide an additional method allowing voters to request an absent voter ballot. The Election Law authorizes the Secretary of State to promulgate forms for use by clerks in elections. The potential harm the rules seek to prevent is that voters eligible to obtain an absent voter ballot may lack the ability to do so when submission must be done solely on a paper form. Given the advances in technology, Michigan's constitutional amendment granting all voters the right to vote absentee without providing a reason, and the Department of State's ability to verify a person's signature through the motor vehicle database, the rules seek to expand access to an absent voter ballot.

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

There are no current rules on this subject matter.

**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 rules protect the health, safety, and welfare and promote a regulatory environment in Michigan that is the least burdensome alternative because it provides additional methods for obtaining ballots and attempts to remove or lessen existing barriers. For example, current practice requires voters download and print the absent voter ballot application. After completion, the form is mailed to the voter's local clerk. By allowing submission online, certain barriers (such as printing and mailing) are limited.

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

There are no affected rules in this rule set that are obsolete or unnecessary.

**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).**

It is not expected that the promulgation of rules will have a fiscal impact on the agency promulgating the rules or the Department of State.

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

No agency appropriation has been made, and no funding source has been provided, as it is not anticipated that the Department of State will have any expenditures associated with the proposed rules.

**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.**

The proposed rules are necessary to expand access to the right for Michigan voters to vote via an absent voter ballot without providing a reason. Voters will be able to request an absent voter ballot through an online portal and be verified through the Department of State. The rules will not place a burden on voters or clerks as applications submitted online will be handled in the same manner as applications submitted via paper. There is no additional burden anticipated.

**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.**

There are no estimated increases or decreases in revenues to other state or local governmental units.

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

Under Michigan Election Law, local clerks are responsible for processing absent voter ballot applications. Those applications currently come in paper format or an online format established in 2020. The proposed rule set codifies existing practice which allows voters to submit an absent voter ballot application online to the Department of State. The platform verifies the voter is registered and eligible to vote. The voter must complete the application by providing their name, address, driver's license number, and last four of their social security number. Once validated against the voter's driver's license, the Department sends the request for an absent voter ballot to the voter's city or township clerk through the Qualified Voter File. The rule would require local clerks to process online requests for absent voter ballots in the same manner as they would process an application submitted via paper.

**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.**

The rules codify current practice and require city and township clerks to process the request for an absent voter ballot. The local clerk must provide the voter with the proper ballot upon receipt of a properly completed absent voter ballot application. The records are already subjected to a statutory retention period that will not be affected by the rule set.

**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.**

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

## **Rural Impact**

**16. 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**

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

The rules should have no impact on the environment.

## **Small Business Impact Statement**

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

The rules should have no impact on small businesses.

**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.**

The rules should have no impact on small businesses.

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

The rules should have no impact on 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 rules should have no impact on small businesses.

**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 simply compliance reporting requirements for small businesses as the 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 rules do not apply to performance, design, or operation standards.

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

The rules do not apply to small businesses.

**21. 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 rules do not apply to small businesses.

**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 are no estimated costs for small businesses as the rules do not apply to 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 estimated costs for small businesses as the rules do not apply to small businesses.

**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 estimated costs for small businesses as the rules do not apply to small businesses.

**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 estimated costs as the rules do not apply to small businesses.

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

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

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

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

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

No small businesses were involved because the rules do not apply to small businesses. The Michigan County Clerks Association and the Michigan Association of Municipal Clerks were asked to provide feedback.

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

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

It is not anticipated that there will be an actual cost to comply with the rules, but any costs would be minimal and may include hosting of the online portal through the State of Michigan network and any associated security and maintenance.

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

It is not anticipated that the rules would provide costs to any businesses or groups. City and Township clerks would be the most affected as they are responsible for issuing ballots to voters. Voters would directly benefit from the proposed rules as it would allow them greater access to vote via an absent voter ballot application.

**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 are no additional costs that are anticipated to be imposed on businesses or other groups as a result of the rules. It is anticipated that local clerks will be able to process online absent voter ballot applications with the resources they currently have been provided.

**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.**

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

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

Individuals expected to be affected by the rules are voters who will benefit from being able to submit an application online to receive an absent voter ballot. No other individuals are expected to be affected by the rules other than city and township clerks which have been identified above.

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

Voters will be impacted by being able to submit an application online to receive an absent voter ballot. Once validated against the voter's driver's license, the Department sends the request for an absent voter ballot to the voter's city or township clerk through the Qualified Voter File. It is not expected that the rules will have a quantitative impact.

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

There are no cost reductions for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

**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.**

Voters will be able to submit an application online to receive an absent voter ballot. Once validated against the voter's driver's license, the department sends the request for an absent voter ballot to the voter's city or township clerk through the Qualified Voter File. It is not expected that the rules will have a quantitative impact.

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

It is not expected that the proposed rules will impact business growth and job creation or elimination in Michigan.

**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.**

It is not anticipated that individuals or businesses that 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 agency relied upon the department's current practice, comments provided by city and township clerks, and procedures used in Virginia. The agency relied upon agency staff and its regulatory experience to formulate estimates and assumptions and determine the need for the proposed rules.

**A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.**

The agency relied upon agency staff and its regulatory and administrative experience to determine the impact of the proposed rules. The agency also looked to local elections officials and clerks associations and relied on their expertise for feedback, and looked to other jurisdictions when determining the existence and extent of the impact of the proposed rules.

## **Alternative to Regulation**

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

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

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

There are no reasonable alternatives other than legislation amending MCL 168.759 and 168.759a.

**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.**

A regulatory program established by a private third-party is not feasible because the subject of the rules concerns the administration of elections. Michigan Election Law reserves this power solely to the Secretary of State, Bureau of Elections, County, City and Township clerks. The agency is not aware of a private market-based system, as opposed to a state regulatory body for this purposes, utilized in other states.

**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.**

Due to the nature of regulating the manner of elections, no significant alternatives to reasonable regulation were considered during the development of the proposed rules. Significant provisions of the proposed rules are intended to codify the current practice. The agency solicited feedback from clerks and incorporated many suggestions and revisions into the proposed rules.

**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.**

The rules explicitly inform persons of requirements and methods of compliance. Any instructions will be developed if necessary.