

# PROCEDURE MANUAL

## 19-06



MICHIGAN STATE POLICE

## Processing Administrative Rules Under the APA

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**Purpose:** This manual establishes procedures regarding promulgation of administrative rules and guidelines, and shall be adhered to by all divisions, districts, and commissions with rule or guideline promulgation authority. These guidelines follow the Administrative Procedures Act (APA).

**Effective Date:** April 19, 2022

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## Definitions:

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None

## Section 1: Administrative Rules and Guidelines

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### 1.1 Michigan Office of Administrative Hearings and Rules (MOAHR)

- a. The MOAHR is housed within the Department of Licensing and Regulatory Affairs and has the responsibility for ensuring that all rules and guidelines processed by state agencies are done so in accordance with the Administrative Procedures Act, [MCL 24.201 - 24.315](#).
- b. All communication, oral and written, between members and the MOAHR shall be communicated to the MOAHR through the department's Regulatory Affairs Officer (RAO), unless prior approval for direct communication with the MOAHR is approved by the RAO.

### 1.2 Regulatory Affairs Officer (RAO)

- a. [MCL 10.151](#) requires that each state agency appoint a RAO. The department's RAO shall be a member of the Executive Operations appointed by the Director.
- b. The RAO shall coordinate the department's rulemaking responsibilities, compile the department's Annual Regulatory Plan, and assist divisions, districts, or commissions with the promulgation of rules and guidelines. The RAO shall serve as a liaison between divisions, districts, or commissions with promulgation authority and the MOAHR and shall ensure that all MOAHR forms are made available.
- c. The department's RAO shall review all proposed rules and guidelines, including changes and rescissions, for proper statutory authority and compliance with applicable laws and rules or procedures established by the MOAHR.

### 1.3 Processing Administrative Rules and Guidelines

- a. All members shall follow the Administrative Procedures Act and this section during the rule and guideline promulgation process. The Administrative Procedures Act details definite procedures that shall be followed in specific order to effect the valid adoption of administrative rules and guidelines.

- b. Any division, district, or commission planning to promulgate a new rule or guideline, or revise or rescind an existing rule or guideline, shall contact the department's RAO for the proper format and other guidance, prior to beginning the promulgation process.
- c. Other than those meetings necessary to identify the need to promulgate, revise, or rescind a rule or guideline, no meetings shall be held to plan, discuss, or draft the content of affected rules or guidelines until the RAO has been contacted and the approval to process rules has been granted by the MOAHR.
- d. All forms, rule drafts, and other written materials prepared during the rule and guideline promulgation process shall be submitted to the MOAHR through the department's RAO. Materials shall not be submitted directly to the MOAHR without the approval of the Legal Resources and Education Unit.
- e. Divisions, districts, and commissions shall not begin drafting rules until a Request for Rulemaking (RFR) has been approved by the department's RAO and the MOAHR.
- f. Once a RFR has been approved, rules may be drafted by the division, district, or commission with promulgation authority. Drafts shall be submitted to the department's RAO for approval within nine months of the approval of the RFR. If rule drafts cannot be submitted within nine months, the promulgating division, district, or commission shall seek an extension from the department's RAO. After approval, the department's RAO shall forward the draft rules to the MOAHR for additional approvals.
- g. Once the department has received approval from the MOAHR, no changes may be made to the rules until after the public hearing on the rules.
- h. All public hearings required by the Administrative Procedures Act shall be held at a location that provides adequate seating and visibility for the anticipated audience.
  - i. Public hearing locations shall be handicap accessible.
  - ii. Whenever possible, public hearings shall be held at state-owned facilities.
  - iii. All persons attending the public hearing, except members attending as observers or moderators, shall be required to sign in using the Administrative Rules Public Hearing Sign-In Sheet, EX-017.
  - iv. All hearings shall be recorded using an audio-visual recording device.
- i. Public hearings shall be moderated by at least one member of the promulgating division, district, or commission with knowledge of the subject matter of the rules. Moderators shall not engage in debates but may clarify proposed rules if they wish. Moderators shall take testimony from those wishing to speak or those wishing to provide written testimony.
- j. Testimony and public concerns expressed at the public hearing shall be considered along with written testimony submitted by the deadline listed in the public hearing notice, when determining whether changes are required to the proposed rules. The department's RAO shall submit the final draft proposed rules with any post-hearing changes to the MOAHR for formal review and certification.
- k. Post-hearing (final) rules become effective and are enforceable only after they have been approved by the state legislature and filed with the Secretary of State.

- i. Rules filed with the Secretary of State must be accompanied by a Certificate of Adoption signed by the Director. The RAO shall prepare and submit the Certificate of Adoption.
- ii. The RAO shall ensure that the promulgating division, district, or commission is notified when approval has been granted.

#### 1.4 Annual Regulatory Plan

- a. The Administrative Procedures Act requires the department to provide the Legislature with a yearly report summarizing planned changes to rules for which the department has promulgation authority. The Annual Plan must cover the period July 1 of the current year through June 30 of the following year.
- b. Unless otherwise directed by the RAO, each division, district, or commission with rule promulgation authority shall summarize its plans for the upcoming regulatory period using the current version of department Memorandum Stationary, UD-040. The report shall be forwarded to the RAO on or before June 15 each year.
- c. Unless otherwise directed by the RAO, reports submitted by divisions, districts, or commissions shall contain at least the following information concerning their rule promulgation authority:
  - i. A statement identifying rules reasonably expected to be processed during the plan period, including those already being processed at the time the plan period begins. Rules to be processed include those that are to be changed and rules to be newly promulgated during the plan period.
  - ii. A statement identifying any rules that are obsolete or superseded and can reasonably be expected to be rescinded during the plan period.
  - iii. A statement identifying mandatory rule promulgation authority not exercised.
  - iv. A statement identifying the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation. This statement shall also contain the following information:
    - 1. Whether there is a continued need for the rules.
    - 2. A summary of any complaints or comments received from the public concerning the rules.
    - 3. The complexity of complying with the rules.
    - 4. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.
    - 5. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.
  - v. A brief but explicit statement explaining the rationale for each rule change or rescission listed in the plan. This statement shall also contain the name of each act and specific sections of the Michigan Compiled Laws granting rule promulgation authority for the rules to be changed or rescinded.

Examples include statutory changes requiring rule changes, reorganization orders affecting rules, changes in practice or procedure that should be reflected in rules to ensure efficient implementation, or improvements in technology necessitating rule revision.

- d. The RAO shall compile reports submitted by each division, district, or commission into a department Annual Regulatory Plan.
  - i. The RAO shall review each plan submitted to ensure that each change, rescission, or promulgation has an appropriate statutory basis, and that each plan provides appropriate detail for legislative review. Plans not meeting minimum standards shall be returned to the appropriate division, district, or commission for revision.
  - ii. The RAO shall submit the plan to the MOAHR on or before June 30 of each year.

### 1.5 Records Retention

- a. Annual Regulatory Plan

The Legal Resources and Education Unit shall maintain copies of the department's three most recent Annual Plans.

- b. Guidelines

- i. Unless otherwise dictated by statute or regulation, divisions, districts, or commissions shall maintain copies of all guidelines and supporting documentation while the guidelines remain in effect.
- ii. Copies of guidelines no longer in effect and supporting documentation shall be maintained for three years.

- c. Administrative Rules

Divisions, districts, or commissions shall maintain copies of all promulgated rules and supporting documentation issued during the current year plus the previous three years. The records maintained by divisions, districts, or commissions shall include at least the following:

- i. Request for Rulemaking approved by the MOAHR
- ii. Regulatory Impact Statement and Cost-Benefit Analysis approved by the MOAHR
- iii. Public Hearing Notice
- iv. Proofs of newspaper publication of the Public Hearing Notice
- v. Administrative Rules Public Hearing Sign-In Sheet(s), EX-017
- vi. Written testimony or comments submitted by interested parties
- vii. Recordings of the public hearing
- viii. Agency Report to the Joint Committee on Administrative Rules
- ix. Final rule draft certification by the MOAHR
- x. Final rule draft certification by LSB

- xi. Certificate of Adoption
- xii. Any other correspondence or documentation the division/district deems necessary.