

**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:**

Licensing and Regulatory Affairs

**Bureau name:**

Public Service Commission

**Name of person filling out RIS:**

Jana Bachman

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**Rule Set Information:**

**ARD assigned rule set number:**

2019-137 LR

**Title of proposed rule set:**

Preservation of Electric, Gas, and Steam Utilities

**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.**

Proposed rules are consistent with Federal Energy Regulatory Commission (FERC) rules.

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

No. The proposed rules address the need for Michigan's regulated utilities to retain certain business records for regulatory actions or proceedings, such as audits, investigations, and rate cases, conducted by the Commission.

**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.**

Michigan's proposed rules do not exceed a federal standard although minor timeframe retention differences exist. The benefit of the deviation (if timeframe differences are considered a deviation) is that the regulated utility and the Commission will be confident that needed records will be available for the Commission to carry out its regulatory duties. No additional costs are anticipated.

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

- The rules were compared to four states: Ohio, Indiana, Illinois, and Massachusetts. Indiana's preservation of records statutes, 170 IAC 10-2-1, 10-2-2, and 10-2-3, adopt the FERC standards.
- Ohio's, Illinois's, and Massachusetts' standards are similar to Michigan's current rules. Other than Indiana, each state has enacted administrative rules that require records to be protected from damage that may occur from heat, humidity, dryness, fire, floods, lack of ventilation, etc. These are consistent with Michigan's current rules. The Commission is proposing to change these requirements somewhat by eliminating that utilities must select a physical storage space that safeguards records from unnecessary exposure to excessive humidity, dryness, or lack of ventilation; and to add that the utility must operate a backup system for records that are electronically preserved. R 460.2503.
- Each of the three states (other than Indiana) have promulgated administrative rules to require regulated utility companies to designate a person or persons to oversee the company's preservation of records. This is consistent with Michigan's current rule.
- Each of the three states' administrative rules permit destruction of records through any appropriate means. This is consistent with Michigan's current rule.
- Each of the three states have rules for the preservation of paper and card stock, magnetic tape, punched cards, microforms, and in the case of Massachusetts, computer discs. The Commission seeks to rescind its applicable rules because these methods of information storage are considered to be obsolete. The Commission believes that these and other proposed rule changes will bring clarity to the Commission's record retention instructions and regulations.
- The regulations for preservation of records for utilities for the State of Indiana are found at [www.in.gov/legislative/iac/title170.html](http://www.in.gov/legislative/iac/title170.html), Article 10. The Ohio code is found at <http://codes.ohio.gov/oac/4901:1-9-06>; for Illinois at [ftp://www.ilga.gov/JCAR/AdminCode/083/083parts.html](http://ftp://www.ilga.gov/JCAR/AdminCode/083/083parts.html) (Part 420, Part 510); for Massachusetts at 220 CMR 75.00. The proposed schedule for Michigan is contained in the copy of the proposed rules.

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

The proposed rules do not exceed the standards in the comparison states although minor timeframe retention differences exist because the Commission chose timeframes that are optimal for the performance of regulatory activities in Michigan.

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

No laws, rules, or other legal requirements 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 FERC preservation of records rules were reviewed and compared to Michigan's. The Commission considered whether to adopt FERC's rules in their entirety as Indiana did, rather than promulgate separate rules for Michigan. The Commission decided against the adoption of the entirety of FERC's rules because it appeared that doing so would add to the regulatory burden of Michigan utilities. For example, FERC's practice is to update individual rules periodically, rather than to update the entire ruleset. Accordingly, if Michigan adopted FERC's rules, Michigan utilities and the Commission Staff would need to continuously research/update/communicate new FERC rules for matters related solely to the Commission's regulatory functions. In contrast, the Commission's practice is to revise its entire ruleset at once (as far as is practicable) and to do so infrequently, ensuring consistency and stability for utilities' record keeping. In addition, the State of Michigan's procedures for enacting rule changes provide for public hearing and comment so that Michigan utilities and the public have the opportunity to give input on any proposed rule changes. If FERC rules were adopted, there would be no opportunity for utilities and the public to bring comments to the Commission or attend a public hearing other than the initial adoption proceedings. Further, the Commission would not be able to make individualized changes to FERC rules that might otherwise be desirable for application in Michigan in consideration of concerns and suggestions received through the public comment and public hearing process.

**4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.**

The proposed rules are not more stringent than any applicable federally mandated standard.

**5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the 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 and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.**

The proposed rules are not more stringent than any applicable federal standard.

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

The proposed rule revisions are intended to allow for modern methods of information storage and to avoid needlessly lengthy storage timeframes, thus reducing the regulatory burden for Michigan utilities. Electronic storage of information was in its early stages in 1980 (the date of the last rules revision). Advances have taken place. For example, cloud storage did not exist in 1980, but is now commonplace. Certain types of storage (punch cards, for example) are no longer used, but remain included in the rules that are currently in force. The Commission seeks to eliminate rules pertaining to obsolete media, and to reduce retention times (where appropriate) so that they are consistent with FERC rules (where appropriate), add clarity to the regulations, and meet modern regulatory needs.

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

No change in frequency of document storage is expected. Utility companies will be required to retain records as they always have been; however, the companies will be able to dispose of certain types of records sooner, should they choose to do so.

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

Currently, the rules address the retention of obsolete media (i.e. punch cards, paper and card stock, magnetic tape, etc.). The proposed rule revisions eliminate these references. The current rules require extraordinarily long retention times for some records. For example, R 460.2520(a)-(d) require retention of general ledgers for 50 years. This length of retention is not consistent with modern accounting and regulatory practices. The Commission is proposing a retention timeframe of 10 years.

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

The desired outcome is to allow for modern information storage and to avoid needlessly lengthy storage timeframes.

**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.**

Currently, the rules provide for climate-controlled, physical storage of paper and other media documents. The proposed rule revisions provide for electronic storage and, in some cases, a shorter retention time. Utility companies should be able to reduce or eliminate brick-and-mortar storage facilities, thus reducing the costs of maintaining the storage space and, possibly, freeing the space for more efficient use. It is envisioned that electronic storage of information will allow personnel to retrieve needed documents quickly and efficiently, rather than searching through indexes and then file cabinets. It should be noted that the proposed rule revisions do not require electronic storage, but provide for the opportunity should the company choose to do so.

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

The current rules are outdated and do not take into account modern accounting and regulatory practices.

**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 revisions are expected to have little, if any, effect on the health, safety, and welfare of Michigan citizens. The primary effect is expected to be that regulated utility companies may experience a simplified, less burdensome process of information storage and retrieval for Commission-related regulatory activities.

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

R 460.2505(3) and (4) are being deleted. Proposed rescissions are: R 460.2505a, R 460.2505b, R 460.2505c, and R 460.2568(b). Each of these rules require the retention of records via media that is considered obsolete, such as punch cards and microform, or address an area (water) that the Commission no longer regulates.

**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 Commission does not anticipate any additional expenditures or savings.

**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 appropriations or funding sources are required because the Commission does not anticipate that the proposed rule revisions will result in any additional expenditures.

**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.**

No burdens are anticipated. The proposed changes are expected to reduce burdens related to brick and mortar storage facilities and ease of retrieval when storing documents by secure electronic methods.

**A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.**

No burdens are anticipated.

**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.**

No increase or decrease in revenues is anticipated.

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

No programs, service, duty, or responsibility is imposed by the proposed rules.

**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.**

No actions must be taken to comply with proposed rules. Electronic storage of records may be used, but is not required.

**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.**

No appropriation or funding source is needed because no additional expenditures are anticipated.

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

No impact is expected on rural areas.

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

Gas, electric, and steam utilities located in rural areas may be affected in the same manner as all utilities that the Commission regulates; that is, document storage and retrieval would be made more efficient, if the utility desires to engage in appropriate electronic storage of documents.

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

There may be a positive impact on the environment in that secure electronic storage may result in reduced need for brick and mortar, climate-controlled storage of paper documents. It is possible that less paper may be sent to landfills or incinerators as a result of electronic storage vs physical storage of documents.

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

The agency did not consider exempting small business because the new rules are anticipated to ease the regulatory burden on small businesses through ease of storage and retrieval of required regulatory documents.

**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.**

No economic impact is anticipated except, perhaps, lower cost to store required regulatory documents if proposed rules are implemented.

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

There are 30 alternative gas suppliers listed on the Commission website, but it is not certain how many alternative electric suppliers there are. Some of these are small businesses. There should be no deleterious effect on any of these businesses. Perhaps, record retention will be simpler and cheaper if the small business chooses to employ acceptable electronic storage instead of brick-and-mortar storage.

**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.**

There are no differing compliance or reporting requirements for small businesses because no increased burden in reporting, record-keeping, or other administrative costs are expected after implementation of proposed rules.

**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 simplify compliance and reporting requirements for small businesses. The proposed rules are expected to ease the regulatory burden on all regulated utilities, including small businesses.

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

The Commission discussed the proposed storage methods and retention timeframes with utility industry representatives and Commission Staff IT, legal, and accounting experts.

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

No disproportionate impact is anticipated on any small business.

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

No report is required under the proposed rules other than what is currently required.

**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.**

No cost of compliance is anticipated for small businesses, except, perhaps, reduced costs for storage of physical documents.

**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.**

No legal, consulting, or accounting costs are anticipated.

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

Small businesses may have reduced costs for storage of documents.

**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.**

No additional costs are anticipated; accordingly, there is no necessity to establish lesser standards for small businesses.

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

Certain documents are required by the Commission to conduct its regulatory duties. These duties relate to public safety and the secure distribution of energy to residential, commercial, and industrial customers of regulated utilities. It is essential that all regulated utilities comply with record retention timeframes.

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

The agency did not involve small businesses in the development of the proposed rules.

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

None were involved.

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

No cost of compliance is anticipated.

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

Regulated utilities will be directly affected by the proposed rules and will, perhaps, enjoy reduced costs for brick and mortar storage of documents.

**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.**

No additional costs are expected.

**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 compliance costs are expected.

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

Regulated utilities in the state of Michigan will be affected..

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

It is expected that ease of retrieval of required documents that are stored by secure electronic methods will lessen the regulatory burden on regulated utilities and the employees who currently retrieve documents from brick and mortar facilities.

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

No study has been conducted to quantify reduced costs to regulated utilities. No reduced costs to any governmental unit is anticipated.

**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.**

The primary benefits are that regulated utilities will be able to store documents electronically and may reduce brick and mortar, climate-controlled storage facilities as they choose. The regulated utilities may be able to produce required regulatory documents easier and faster through secure electronic storage as opposed to file cabinets and boxes in separate facilities.

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

No impact is expected.

**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.**

No disproportionate impact on any individual or business.

**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 Commission discussed the proposed changes with regulated utility representatives and Commission Staff experts in accounting, engineering, and regulatory requirements related to the Commission's duties.

**A. 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 rules.**

Regulated utilities report that secure electronic storage is employed almost universally, in addition to brick and mortar. The proposed rules are consistent with modern accounting methodology and document storage.

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

There are no reasonable alternatives to the proposed rules that would achieve the same results.

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

No statutory amendments are required.

**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.**

No private market-based mechanisms are feasible for the Commission because the rules are intended to aid the Commission and regulated utilities in the performance of regulatory responsibilities. Each company is free to employ whatever storage system it chooses that meets the rule requirements for security, safety, and duration. This may or may not include the purchase of a service from a private, market-based company .

**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.**

The Commission considered adopting the FERC rules in their entirety, but chose not to because it would eliminate individualized rule updates brought to the attention of the Commission through public comment and hearings, in addition to adding to the regulatory burden by requiring research of FERC rules that may or may not apply to the particular regulatory action taking place in Michigan.

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

None. The rules are self-explanatory.