



SUBJECT: Legal and Administrative Proceedings

TO: Members of the Department

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34.1 LEGAL MATTERS--GENERAL RESPONSIBILITIES

As used in this Order, the term “legal process” shall refer to any document purporting to require a member of the department to appear for, or to produce an item for inspection at, a judicial or quasi-judicial proceeding.

34.1.1. MEMBER RESPONSIBILITIES

- A. Members shall comply with all legal process as detailed in this Order, even in cases where the member doubts the validity of service.
- B. Members shall not avoid service of any legal process.
- C. Members served any legal process via mail shall immediately complete any attached return receipt or other acknowledgement included in the mailing and return it to the sender if postage has been paid by the sender. If a mailing does not include a return receipt or acknowledgement, or if the acknowledgement does not include postage, members are not required to contact the sender to confirm receipt unless required to do so by work site policy.
- D. While appearing at any legal or administrative proceeding, members shall wear the attire required by their work site policy. However, enforcement members shall not wear a department uniform while attending a proceeding off-duty.
- E. If a legal document appears to have been improperly served, members shall notify their supervisor and seek guidance from the prosecutor in criminal cases and from the Office of the Director in all other matters.
- F. Members who are served legal process that appears illegitimate or is otherwise not covered by this Order shall contact the Office of the Director for guidance.

34.1.2. WORK SITE POLICIES

- A. Work site commanders shall ensure that all members assigned to their work site receive and comply with all legal process as outlined by this Order.
- B. Work site commanders shall develop and implement a work site policy that, at a minimum, accomplishes the following:
 - (1) Provide for a means of recording all subpoenas and notices concerning criminal matters or civil infractions (e.g., use of a court book). The means chosen shall contain information detailed enough to allow members and their supervisors to ensure that subpoenas and notices are honored.
 - (2) Provide a conduit between local courts and members who may be required to appear in court (e.g., designation of a court officer) so members will receive subpoenas and notices in a timely manner.
 - (3) Provide for a means of notifying members they are required to appear in court when the subpoena or notice is delivered to the work site while the member is not working and the member will not return to work before the court date.
 - (4) Provide for a means of delivering notices and subpoenas to members who will work between the date of delivery and the court date.
 - (5) Provide a procedure for delivering subpoenas and notices to members assigned to other work sites in a timely manner, and for documenting such delivery.
 - (6) Detail the procedures to be used in delivering or serving subpoenas upon citizens, including service by mail if approved by local prosecutors and courts.
 - (7) Identify the appropriate attire for court and hearing appearances.
- C. In developing the policy required by this section, work site commanders shall consult with their prosecutors and court administrators to ensure that the policy does not conflict with local rules, procedures, and preferences.
- D. Service of Subpoenas by Mail
 - (1) Work site commanders who wish to serve subpoenas to citizens by mail shall contact the courts and prosecuting attorneys in their work site area to obtain prior approval.
 - (2) Completion and distribution of required documents.
 - a. The Instructions Accompanying Subpoena by Mail, UD-060, shall be completed and placed in an envelope for mailing.
 - b. The Acknowledgment of Receipt of Subpoena by Mail, UD-061, shall be completed by filling in the spaces on the back side of the card, except the spaces for phone number, signature and date, stamping the post name, address and phone number on the front of the card, placing the proper postage on the card and placing the card in the envelope with the UD-60.
 - c. The witness copy of the subpoena shall be placed in the envelope along with the UD-60 and UD-61 and mailed to the witness.

- d. The court return copy of the subpoena shall be placed in a pending file to await return of the post card.
- e. When the post card is returned, it shall be stapled to the court return copy of the subpoena and placed in the court jacket for return.
- f. If the post card is not returned by the witness within ten days prior to the appearance date, the officer shall proceed with personal service of the subpoena.

34.1.3. RETENTION OF LAWSUIT-RELATED RECORDS

- A. The Office of the Director shall maintain all official department records concerning civil lawsuits involving the department or its members.
- B. Unless directed by the Office of the Director, lawsuit-related paperwork shall not be attached to departmental records, included in case files, or documented in any report not required by this Order.
- C. The Freedom of Information Unit may keep copies of all records necessary to properly respond to lawsuits related to the Freedom of Information Act.

34.2 STATUS OF MEMBERS OR RETIREES APPEARING IN LEGAL MATTERS

34.2.1. MEMBER DUTY STATUS

- A. Except as otherwise required by this Order or applicable collective bargaining agreement, members shall be considered on-duty when appearing for court for duty-related criminal or civil infraction cases, or while appearing in department related civil lawsuit proceedings governed by this Order.
 - (1) When members appear outside of their scheduled shift for criminal or civil infraction cases, they shall be considered on-duty until released by the court or prosecutor.
 - (2) When members appear outside of their scheduled shift for administrative hearings, they shall be considered on-duty until released by the hearing officer or are required to terminate participation by the member's supervisor.
 - (3) When members appear outside of their scheduled shift for department-related civil lawsuit proceedings, they shall be considered on-duty until released by the department's attorney or the court.
 - (4) Members released from appearance as described above shall not be considered on-duty thereafter without prior approval of their supervisor unless the member was released during his or her regularly scheduled shift. Members released during their shift shall immediately notify their supervisor.
- B. Members required to appear for any proceeding not arising out of the member's employment with the department shall not be considered on-duty while appearing. When such appearance conflicts with the member's scheduled shift, members shall charge such time against available leave credits.

34.2.2. RETIREE STATUS

- A. Retired members who are determined by the department's legal counsel to be an essential witness in a civil case in which the department is a party may be compensated by the department at the current rate of pay for the rank at which the member retired.
- B. Retired members may be compensated for time associated with attendance at trials, hearings, depositions, or other necessary meetings, including reasonable travel time to and from such events.
- C. Compensation of retirees shall not be made without the prior approval of the Office of the Director.
- D. This section does not apply to criminal cases or civil cases in which the retired member is a named defendant represented by counsel at state expense.

34.3 CIVIL LAWSUITS

Members of the department may become involved in a civil lawsuit in connection with matters arising out of their employment or for matters unrelated to department work. This section provides policies and procedures for accepting service of legal process, complying with discovery requests and other issues related to civil lawsuits against the department or members.

34.3.1 SUMMONS AND COMPLAINT--DEPARTMENT RELATED CIVIL LAWSUITS

A summons and complaint is a document used to notify a person or entity that they are being sued and sets forth the allegations and relief requested in such lawsuit. Members served with a summons and complaint in a department related civil lawsuit shall follow the following procedures:

- A. Acceptance of Summons and Complaint Naming Individual Members
 - (1) A member named in a civil lawsuit may only accept service of a summons and complaint directed to them. Members, including supervisors, shall not accept service on behalf of another member, the Director, or the department.
 - (2) If a member named in a civil lawsuit is off-duty when service is attempted, the process server shall be notified of the date and time of the member's return to work.
 - a. Process servers shall not be given a member's home address or telephone number under any circumstances.
 - (3) When a member named in a civil lawsuit is on-duty, but not at the work site, the member shall be notified to return to the work site to accept service.
- B. Requests for Waiver of Serving a Summons and Complaint
 - (1) Members shall not sign any request for waiver of service or otherwise agree to waive service of legal process unless instructed to do so by the Office of the Director or an attorney representing the member at department expense.
 - (2) If a member receives a request for waiver of service, the member shall notify the Office of the Director in the manner outlined in Section 34.3.1.D. for a properly served summons.

C. Summons and Complaint Naming the Department or Director

- (1) Only the following members may accept service of legal process naming the department or the Director as parties:
 - a. The Director or a deputy director serving as Acting Director
 - b. Members specifically designated by the Director
- (2) Other than those members designated by the Director, members shall not accept legal process naming the Director or the department as a party.
- (3) If service upon the Director or the department is attempted at a local work site, the process server must be directed to Headquarters and informed that such legal process is only accepted during normal business hours.

D. Notification to the Office of the Director of Service

- (1) Upon being served with a summons and complaint, members shall immediately notify the Office of the Director via telephone and fax the following to the department's Litigation Coordinator at the numbers provided in the department's directory:
 - a. Completed Report of Lawsuit form, EX-16
 - b. All papers served upon the member
- (2) Within 24 hours of being served, members shall send the following via overnight mail to the Office of the Director:
 - a. Original completed Lawsuit form, EX-16
 - b. All original papers served upon the member
 - c. The original envelope, if served by mail
 - d. Copies of all incident reports giving rise to the civil lawsuit, including supplemental reports and external documents
- (3) Each member named in a civil lawsuit must follow the above procedures; it is not sufficient for one member to submit paperwork on behalf of all involved members.
- (4) Members named in a civil lawsuit shall keep photocopies of the papers served upon them and the Report of Lawsuit form, EX-16 until such time as the Office of the Director has received the documents mailed by the member. Thereafter, members may keep copies of the EX-16, papers served, and other lawsuit-related correspondence at their discretion. This section does not authorize members to keep copies of official department records related to a civil lawsuit (e.g., incident reports or external documents).

E. Notice of Intent to Sue

A notice of intent to sue is a written notice that another party intends to file a civil lawsuit against a member or the department. If a member receives a notice of intent to sue, it shall be processed in the same manner as a properly served summons and complaint as set forth in Section 34.3.1.D.

F. Demand Notice

A demand notice is a written notice making a claim that the member or department has done something which might lead to a civil lawsuit if certain demands are not met. If a member receives a demand notice, it shall be processed in the same manner as a properly served summons and complaint as set forth in Section 34.3.1.D.

34.3.2. SUMMONS AND COMPLAINT—NON-DEPARTMENT RELATED CIVIL LAWSUITS

A. Members being sued for reasons unrelated to department work shall report such suits to their work site commander within five days of being served.

(1) The report shall be limited to:

- a. Identifying the parties
- b. The docket number
- c. The court in which the lawsuit was filed
- d. The nature of the action

(2) This section does not apply to divorce actions.

34.3.3. SUBPOENAS--DEPARTMENT RELATED CIVIL LAWSUITS

Once a department related civil lawsuit has commenced, the department or a member may receive a subpoena commanding a party or witness to appear for the purpose of testifying or a subpoena to produce notes, records, documents, or other portable tangible things.

A. Acceptance of Subpoenas

- (1) Members shall not accept subpoenas on behalf of the department, the Director, or another member in any civil lawsuit, regardless of whether the member or the department is a party to the lawsuit.
- (2) If a member is subpoenaed by an attorney or party other than one representing the department, the member shall immediately notify the attorney representing either the department or the member and the Office of the Director. This subsection applies only to civil lawsuits in which the member or the department is named as a party in the lawsuit.

B. Subpoenas Commanding Appearance

Members subpoenaed to appear in any civil lawsuit related to department work within the State of Michigan shall appear as directed and shall be considered on-duty.

C Subpoenas Commanding Appearance in Out-of-State Proceedings

- (1) Members shall not appear outside of Michigan pursuant to a subpoena without the prior authorization of the Office of the Director. Members receiving a subpoena from an out-of-state entity shall immediately notify their work site commander and the Office of the Director.
- (2) Prior to seeking authorization to attend a proceeding outside of Michigan, the member's work site commander shall attempt to arrange a deposition to be conducted in Michigan during the member's normal working hours. When such a deposition has been arranged, the member shall appear as if properly subpoenaed by an entity in Michigan.
- (3) When a deposition cannot be arranged, the work site commander shall evaluate the necessity of the member's appearance and, if deemed necessary, shall seek approval through channels from the Office of the Director. If authorized to appear by the Office of the Director, the member shall appear as if properly subpoenaed by an entity in Michigan.

D. Subpoenas for Records or Evidence When the Department or Member is a Party

Members receiving a subpoena for records or evidence in a civil lawsuit where the department or a department member is a party shall process the subpoena as a discovery request detailed in Section 34.3.4. of this Order.

E. Subpoenas for Records or Evidence When the Department or Member is not a Party

Members receiving a subpoena for records or evidence in a civil lawsuit related to department work but where the department or a department member is not a party shall immediately forward the request to the Freedom of Information (FOI) Unit for processing. Members shall notify the requesting attorney that the subpoena has been forwarded to the FOI Unit for processing and request that the attorney direct future subpoenas to the FOI Unit.

34.3.4. DISCOVERY REQUESTS--DEPARTMENT RELATED CIVIL LAWSUITS

Once a civil lawsuit has commenced, the department or a member may receive a discovery request. For purposes of this section, the term "discovery request" refers to the various pretrial methods used to obtain facts and information about the case from a party other than a subpoena. Some of the more common discovery requests a department member may receive in a civil lawsuit include a request to attend a deposition, answer interrogatories, a request for production of documents, and a request for admissions.

- A. Members receiving a discovery request from an attorney representing either the department or the member at department expense shall fulfill the request on or before the deadline given.
- B. Members receiving a discovery request from another attorney or party in a case in which the department is a party or the member is a party shall immediately forward the request to the Office of the Director.
 - (1) Members shall comply with requests to preserve evidence made by any party and shall notify their work site commander of the request. Members shall not respond to any other discovery requests made by another attorney or party unless directed to do so by the Office of the Director or an attorney representing the department.

- C. Members receiving a discovery request in a civil lawsuit related to department work but where the department or a department member is not a party shall contact the Office of the Director for guidance.

34.3.5. SUBPOENAS AND DISCOVERY REQUESTS—NON-DEPARTMENT RELATED CIVIL LAWSUITS

- A. Members attending any proceeding pursuant to a subpoena or discovery request in a civil lawsuit unrelated to department work shall not be considered on-duty while traveling to, from, or appearing at the proceeding.
- B. Members shall charge such time against available leave credits when their appearance conflicts with their regularly scheduled shift.
- C. The department shall not pay the member's expenses, but the member may retain any witness fees and travel expense reimbursements received.

34.3.6. COMMUNICATIONS DURING A CIVIL LAWSUIT

- A. Except as authorized by this Order, members shall not communicate with an opposing party or attorney in a department related civil lawsuit or a civil lawsuit in which the department may become involved, without the approval of the Office of the Director or the attorney representing the member or department.
- B. Members shall immediately return phone calls, emails, or other correspondence from the Office of the Director or an attorney representing the department or members in a civil lawsuit. Requests for information shall be answered on or before any deadline given by the requestor.
- C. Members shall not make public comment, whether to the media or otherwise, regarding a civil lawsuit involving the department. Persons requesting public comment shall be referred to the Public Affairs Section for comment in accordance with the policies specified in Official Order No. 20.
- D. Members who desire information regarding a civil lawsuit to which they are a party may contact the Office of the Director for the status of their lawsuit. Members shall not contact a department-provided attorney directly for lawsuit status information unless the attorney has expressly given the member permission to do so.
- E. Members shall not discuss communications to or from attorneys representing the department or the member with any other person except members of the Office of the Director serving as a liaison with the attorneys.
- F. Members shall not engage in settlement negotiations, whether formal or informal, without the express authorization of the Director.

34.3.7. DEFENSE OF DEPARTMENT MEMBERS

- A. Members sued individually for conduct arising out of their employment with the department may be provided legal representation at state expense in accordance with applicable Civil Service Rules and applicable collective bargaining agreements.

- B. The Director has sole discretion to determine which attorney, agency, or law firm will represent the department or its members at state expense. The department will not pay legal fees or other related expenses for legal representation employed by members without the prior, written approval of the Director.
- C. The department will not provide legal counsel, nor will it reimburse lawsuit-related expenses, for members sued for reasons unrelated to department work.
- D. The department may indemnify an employee when that employee is sued for injuries caused by the negligence of the employee in the course of the employee's employment.

34.4 CRIMINAL CASES, CIVIL INFRACTION HEARINGS, AND ADMINISTRATIVE PROCEEDINGS

This section provides policies and procedures for accepting and complying with service of legal process and other issues related to criminal cases, civil infraction hearings, and administrative proceedings.

34.4.1. SUBPOENAS--CRIMINAL CASES

- A. Acceptance of Subpoenas
 - (1) Except when addressed to the department or the Director, members are permitted to receive subpoenas on behalf of themselves or other members in criminal cases.
 - (2) When members receive a subpoena, it shall be recorded in accordance with work site policy and affected members shall be notified in accordance with work site policy.
 - (3) When there is no work site policy on the disposition of a particular subpoena, members shall seek guidance from their supervisor.
 - (4) When a subpoena is addressed to the department or the Director, members shall direct the party attempting to serve the subpoena to do so at Headquarters.
- B. Subpoenas Commanding Appearance
 - (1) Members who know of a subpoena requiring their appearance in any criminal proceeding within the state of Michigan shall appear at the time and place listed in the subpoena unless the member is excused by the court having jurisdiction, the party who issued the subpoena, or is on-call in accordance with Official Order No. 47.
 - (2) The Pre-Trial Case Report, UD-68, or substantially similar local form approved by local courts and prosecutors, may be substituted for members' actual appearance at pre-trial hearings or conferences when authorized by work site policy developed in cooperation with local prosecutors and courts.
- C. Subpoenas Commanding Appearance at Out-of-State Proceedings.
 - (1) Members shall not appear outside of Michigan pursuant to a subpoena without the prior authorization of the Director. Members receiving a subpoena from an out-of-state entity shall immediately notify their work site commander.

- (2) The subpoenaed member's work site commander shall evaluate the necessity of the member's appearance and, if deemed necessary, shall seek approval through channels from the Director. If authorized to appear by the Director, the member shall appear as if properly subpoenaed by an entity in Michigan.

D. Subpoenas for Records or Evidence

- (1) Members subpoenaed to produce evidence by the prosecutor in the case shall comply with the requirements of the subpoena. Members subpoenaed to produce evidence by another party shall produce the evidence only with the approval of the prosecutor in the case.
- (2) Members subpoenaed to produce department records by the prosecutor in the case shall comply with the requirements of the subpoena.
- (3) Members subpoenaed to produce department records by another party shall notify the prosecutor in the case and shall produce those records directly related to the case (e.g., original and supplemental incident reports, traffic citations, department forms) unless otherwise directed by the prosecutor.
- (4) Subpoenas for records not directly related to the case (e.g., officer daily reports, unrelated incident reports, confidential informant records) shall be forwarded to the FOI Unit for processing unless otherwise directed by the prosecutor.

34.4.2. DISCOVERY REQUESTS--CRIMINAL CASES

- A. Discovery requests in criminal cases shall only be processed by local work sites when requested by the prosecutor in the case. Members receiving a discovery request from any other entity shall immediately notify the prosecutor and assist the prosecutor in responding to the request.
- B. Members receiving a discovery request from a prosecutor shall provide the requested information, documents, or evidence.
 - (1) Requests for department records not originated by or maintained at the local work site shall be forwarded to the FOI Unit.
- C. Members shall not process discovery requests from criminal defense attorneys.
 - (1) Members receiving a discovery request from a criminal defense attorney shall refer the attorney to the prosecutor.
 - (2) This section does not apply to the FOI Unit acting in accordance with the Freedom of Information Act.
- D. Requests to Preserve Evidence
 - (1) Members shall comply with requests to preserve evidence made by any party and shall notify their work site commander of the request.

- (2) If the request came from someone other than the prosecutor or attorney representing the department, the member shall immediately notify the prosecutor or attorney representing the department.

34.4.3. SUBPOENA OR NOTICE TO APPEAR--CIVIL INFRACTION PROCEEDINGS

A. Acceptance of Subpoenas and Notices to Appear

- (1) Except when addressed to the department or the Director, members are permitted to receive subpoenas and other notices to appear on behalf of themselves or other members in civil infraction proceedings.
- (2) When members receive a subpoena or notice, it shall be recorded in accordance with work site policy and affected members shall be notified in accordance with work site policy.
- (3) When there is no work site policy on the disposition of a particular subpoena or notice, members shall seek guidance from their supervisor.
- (4) When a subpoena or notice is addressed to the department or the Director, members shall direct the party attempting to serve the subpoena or notice to do so at Headquarters.

B. Subpoenas and Notices Commanding Appearance

In cases related to department work, members shall honor all subpoenas and notices for which they have knowledge by appearing at the time and place listed in the subpoena or notice unless the member is excused by the court having jurisdiction, the prosecutor in cases scheduled for a formal hearing, or is on-call in accordance with Official Order No. 47.

- (1) Civil infraction hearings shall only be attended by the member signing the citation unless the prosecutor requests the attendance of other members at a formal hearing.

34.4.4. SUBPOENA OR NOTICE TO APPEAR--ADMINISTRATIVE PROCEEDINGS

A. Acceptance of Subpoenas and Notices to Appear

- (1) Except when addressed to the department or the Director, members are permitted to receive subpoenas and other notices on behalf of themselves or other members in administrative proceedings.
- (2) When members receive a subpoena or notice, it shall be recorded in accordance with work site policy and affected members shall be notified in accordance with work site policy.
- (3) When there is no work site policy on the disposition of a particular subpoena or notice, members shall seek guidance from their supervisor.

- (4) When a subpoena or notice is addressed to the department or the Director, members shall direct the party attempting to serve the subpoena or notice to do so at Headquarters.

B. Subpoenas and Notices Commanding Appearance

(1) Implied Consent Hearings--Department of State

- a. Members shall notify their supervisors immediately upon receiving a notice to appear for an Implied Consent Hearing. Members shall appear as directed in the notice and are considered on-duty while appearing.

(2) Driver Improvement Hearings--Department of State

- a. Members shall appear as directed if work site staffing levels will not be unduly affected, and are considered on-duty while appearing. The effect on work site staffing levels shall be determined by the member's supervisor.
- b. Members receiving a notice of a Driver Improvement Hearing shall notify their supervisor and shall attend the hearing if the supervisor determines that staffing levels allow.
- c. Members shall not appear at a Driver Improvement Hearing on overtime status at any location without obtaining prior approval through channels from their bureau commander.

(3) Civil Service Hearings

- a. Members shall appear as directed when subpoenaed for a Civil Service Hearing.
- b. Members receiving such a subpoena shall immediately notify the Human Resources Division.
- c. Members shall be granted administrative leave for the hearing and travel time which is in conflict with the member's regular shift.

(4) Professional Disciplinary Proceedings

- a. Members shall appear as directed when they receive a subpoena or other notice to appear for disciplinary proceedings concerning a state-issued professional license (e.g., medical licenses, private investigator licenses, licenses to practice law, Judicial Tenure Commission proceedings).
- b. Members shall be considered on-duty while appearing when their appearance is requested as a result of the member's department work. When their appearance is requested as a result of something not related to department work, members shall use available leave credits when appearing conflicts with their regularly scheduled shift.

(5) Other Administrative Hearings

- a. Members requested to appear in other administrative hearings arising out of department work (e.g., Liquor Control Commission hearings, labor arbitration hearings for another agency) shall appear as directed if work site staffing levels will not be unduly affected and shall be considered on-duty while appearing.
- b. Members receiving such a request shall notify their supervisor, and shall attend the hearing if their supervisor determines that staffing levels will not be unduly affected.

34.4.5. COMMUNICATIONS DURING A CRIMINAL CASE

- A. Members shall respond to all communications from the prosecutor as soon as practical. Requests for information shall be answered on or before any deadline given by the prosecutor.
- B. Members may be contacted by a defendant, defendant's attorney, or defendant's investigator to talk about the case. Members are not required to talk to such individuals prior to testifying in court and shall not do so unless the member contacts the prosecutor assigned to the case and provides an opportunity for him or her to be present at the time of the interview.
- C. All communications with the public, including the news media, shall be in accordance with the policies outlined in Official Order No. 20. Questions regarding communications with the media regarding a criminal case shall be referred to the Public Affairs Section.
- D. Members may be contacted by the prosecutor or defense attorney to discuss a defendant pleading to a lesser charge in a criminal case. Members shall not become involved in these negotiations and shall not provide advice or recommendations on any proposed plea bargain or reduction of charges.

34.5 PROCESSING ADMINISTRATIVE RULES AND GUIDELINES

This section establishes policy and 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.

34.5.1. STATE OFFICE OF REGULATORY REINVENTION (ORR)

- A. The ORR 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 department members and the ORR shall be communicated to the ORR through the department's Regulatory Affairs Officer, unless prior approval for direct communication with the ORR is approved by the Office of the Director.

34.5.2. 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 Office of the Director 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 ORR, and shall ensure that all ORR 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 ORR.

34.5.3. 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 ORR.
- D. All forms, rule drafts, and other written materials prepared during the rule and guideline promulgation process shall be submitted to the ORR through the department's RAO. Materials shall not be submitted directly to the ORR without the approval of the Office of the Director.
- 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 ORR.
- F. Once an 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 ORR for additional approvals.
- G. Once the department has received approval from the ORR, 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.
 - (1) Public hearing locations shall be handicap accessible.
 - (2) Whenever possible, public hearings shall be held at state-owned facilities.
 - (3) All persons attending the public hearing, except department members attending as observers or moderators, shall be required to sign in using the Administrative Rules Public Hearing Sign-In Sheet, EX-17.
 - (4) 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 ORR 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.
 - (1) 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.
 - (2) The Office of the Director shall ensure that the promulgating division, district, or commission is notified when approval has been granted.

34.5.4. 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-40. The report shall be forwarded to the Office of the Director 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:
 - (1) 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.
 - (2) A statement identifying any rules that are obsolete or superseded and can reasonably be expected to be rescinded during the plan period.
 - (3) A statement identifying mandatory rule promulgation authority not exercised.
 - (4) 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:
 - a. Whether there is a continued need for the rules.
 - b. A summary of any complaints or comments received from the public concerning the rules.

- c. The complexity of complying with the rules.
 - d. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.
 - e. 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.
- (5) 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 Office of the Director shall compile reports submitted by each division, district, or commission into a department Annual Regulatory Plan.
- (1) The Office of the Director 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.
 - (2) The Office of the Director shall submit the plan to the ORR on or before June 30 of each year.

34.5.5. RECORDS RETENTION

A. Annual Regulatory Plan

The Office of the Director shall maintain copies of the department's three most recent Annual Plans.

B. Guidelines

- (1) 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.
- (2) 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:

- (1) Request for Rulemaking approved by the ORR

- (2) Regulatory Impact Statement and Cost-Benefit Analysis approved by the ORR
- (3) Public Hearing Notice
- (4) Proofs of newspaper publication of the Public Hearing Notice
- (5) Administrative Rules Public Hearing Sign-In Sheet(s), EX-17
- (6) Written testimony or comments submitted by interested parties
- (7) Recordings of the public hearing
- (8) Agency Report to the Joint Committee on Administrative Rules
- (9) Final rule draft certification by the ORR
- (10) Final rule draft certification by LSB
- (11) Certificate of Adoption
- (12) Any other correspondence or documentation the division/district deems necessary.

34.6 REVISION RESPONSIBILITY

Responsibility for continuous review and revision of this Order lies with the Office of the Director.

DIRECTOR