

**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:**

Labor and Economic Opportunity

**Bureau name:**

MIOSHA

**Name of person filling out RIS:**

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**Rule Set Information:**

**ARD assigned rule set number:**

2021-27 LE

**Title of proposed rule set:**

General Industry and Construction Safety and Health Part 505. Coronavirus-19 (COVID-19)

**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.**

The proposed rules are similar to Michigan's current emergency coronavirus disease 2019 (COVID-19) rules.

Currently Virginia is the only state that has permanent COVID-19 workplace safety standards, 16VAC25-220, final permanent standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19. Michigan's proposed standard is similar to Virginia's.

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

No

**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.**

Federal OSHA does not currently have a COVID-19 standard. Nonetheless, Michigan's experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. Workplaces, where employees, customers, and members of the public congregate, pose a particular threat for COVID-19's spread. To mitigate and limit COVID-19's spread in workplaces and to protect employees across Michigan, it is necessary to impose these rules and standards.

The Director of the Department of Labor and Economic Opportunity therefore, for the preservation of the public health, safety, and welfare, finds that a clear and convincing need exists for the promulgation of permanent rules as provided in the Administrative Procedures Act of 1969 (APA), 1969 PA 306.

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

Currently Virginia is the only state that has permanent COVID-19 workplace safety standards, 16VAC25-220, final permanent standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that causes COVID-19. Michigan's proposed standard is similar to Virginia's.

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

Michigan's proposed standard is similar to Virginia's.

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

Currently MIOSHA has COVID-19 emergency rules in effect, that would be replaced by these COVID-19 permanent 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.**

Upon promulgation of the proposed rules the current MIOSHA COVID-19 emergency rules will be rescinded, thus avoiding any duplication.

**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 to these rules. Federal OSHA does not have any equivalent rules.

**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 to these rules. Federal OSHA does not have any equivalent rules.

## **Purpose and Objectives of the Rule(s)**

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

These rules intend to establish requirements for employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees. Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). SARS-CoV-2 is easily transmitted through the air from person-to-person through respiratory aerosols, and the aerosols can settle and deposit on environmental surfaces where they can remain viable for days. In-person work, by its nature, removes people from the confines and relative safety of their homes to interact with others who may be carrying the virus including coworkers, customers, patients, or the public at large. Employees who come into contact with others at work are at elevated risk of infection.

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

The targeted behavior of in-person work has changed due to MIOSHA's COVID-19 emergency rules in that less in-person work is being performed. These MIOSHA COVID-19 permanent rules will continue the requirements of the emergency rules.

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

There is little difference between current behavior/practice and desired behavior/practice since there are currently MIOSHA COVID-19 emergency rules in effect.

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

A permanent standard in place to protect Michigan workers after the emergency rules expire.

**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.**

Michigan's experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. Workplaces, where employees, customers, and members of the public congregate, pose a particular threat for COVID-19's spread. To mitigate and limit COVID-19's spread in workplaces and to protect employees across Michigan, it is necessary to impose these rules and standards.

Currently the state is still in the midst of a COVID-19 pandemic. The proposed rules will help prevent continued exposures in the workplace.

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

The rationale for changing the rules is that the current emergency rules will expire.

**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.**

Work, by its nature, removes people from the confines and relative safety of their homes to interact with others who may be carrying the virus including coworkers, customers, patients, or the public at large. Employees who come into contact with others at work are at elevated risk of infection. Businesses must do their part to protect employees, their patrons, and their communities.

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

MIOSHA does not believe that any of the rules 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).**

The emergency rules have been in place since October 14, 2020. There should be no additional fiscal impact on the agency.

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

The emergency rules have been in place since October 14, 2020. There should be no additional fiscal impact on other or local governments.

**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 and suitable to help protect individuals during the COVID-19 pandemic. There should be no additional burdens placed on individuals as the rules are directed toward employers.

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

The requirements in the rules are still needed since we are still in a pandemic, and outweighs any perceived 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.**

The emergency rules have been in place since October 14, 2020. There should be no additional fiscal impact on other or local governments.

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

There should be no additional program, service, duty or responsibility that will be imposed on any city, county, town, village or school district 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.**

The emergency rules have been in place since October 14, 2020. There should be no additional actions by governmental units to be in compliance in these rules.

**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 for state or local governmental units have been made or a funding source provided for any additional expenditures associated with the proposed rules.

## **Rural Impact**

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

The emergency rules have been in place since October 14, 2020. There should be no additional impact on rural areas.

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

The emergency rules have been in place since October 14, 2020. There should be no additional burdens to public or private interests in rural areas due to these proposed rules.

## **Environmental Impact**

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

The proposed rules do not have any impact on the environment.

## **Small Business Impact Statement**

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

MIOSHA did not consider exempting small businesses, because all Michigan employers are required to provide a workplace free of recognized hazards regardless of the size of the business.

**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.**

MIOSHA was unable to reduce the impact on the proposed rules on small businesses as it was not feasible to determine each individual cost for all businesses.

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

These rules will cover all employers in the state of Michigan that fall under the jurisdiction of MIOSHA.

**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 or timetables for 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.**

MIOSHA did not consolidate or simplify the compliance and reporting requirements for small businesses.

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

MIOSHA did not establish performance standards to replace design or operation standards required by the proposed rules.

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

There are no disproportionate impacts caused by these proposed rules on small businesses because of their size or geographic location as they apply to all covered employers in the state of Michigan.

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

MIOSHA was unable to determine the cost for small businesses to comply with the proposed rules. Therefore, no report was prepared.

**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.**

MIOSHA was unable to determine the cost for small businesses to comply with the proposed rules.

**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.**

MIOSHA was unable to determine the cost for small businesses to comply with the proposed rules.

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

The emergency rules have been in place since October 14, 2020. There should be no additional burdens.

**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.**

It is not possible to exempt or set lesser standards for compliance by small businesses.

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

Allowing exemptions or allowing lesser standards of compliance for small businesses, could potentially injure employees employed by small businesses.

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

MIOSHA convened an advisory committee and included associations that represent small businesses.

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

Associated General Contractors, Michigan Licensed Beverage Association, National Electrical Contractors Association, Michigan Chamber of Commerce, Michigan Retailers Association, Michigan Manufacturers Association, and Blue Cross Blue Shield.

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

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

The emergency rules have been in place since October 14, 2020. There should be no additional burdens.

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

These proposed rules apply to all businesses under MIOSHA's jurisdiction.

**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.**

The emergency rules have been in place since October 14, 2020. There should be no additional burdens.

**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.**

The emergency rules have been in place since October 14, 2020. There should be no additional burdens.

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

There should be no additional burdens placed on individuals as the rules are directed toward employers.

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

There should be no qualitative or quantitative impact on individuals due to the proposed rule changes.

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

The emergency rules have been in place since October 14, 2020. There should be no cost reductions to businesses, individuals, groups of individuals, or governmental units.

**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 direct benefits derived from the proposed rules will help employers keep their employees safe from contracting COVID-19.

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

The proposed rules should not 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.**

There should be no individuals or businesses that will be disproportionately affected 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.**

MIOSHA used statistics and guidance supplied by the Centers for Disease Control and Prevention (CDC) to help determine the impact of the proposed rules on the regulated community. MIOSHA was unable to determine the cost for businesses to comply with the proposed rules, due to the wide-ranging impact on the various businesses in Michigan.

**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.**

MIOSHA did not make any estimates.

## **Alternative to Regulation**

**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 or similar goals as we remain in this pandemic.

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

There are no statutory amendments that are necessary.

**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.**

MIOSHA's responsibility to enforce workplace rules under the Michigan Occupational Safety and Health Act, 154 of 1974, creating a program similar to this would be a duplication of efforts. There are no private market-based systems utilized by other states since Federal OSHA or other state plans are responsible for enforcing workplace safety rules.

**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.**

MIOSHA convened an advisory committee and included associations and labor groups that represent Michigan businesses and Michigan workers. As a result of input or comments applied by members of the advisory committee MIOSHA considered many different options or rules. There was no consensus achieved for most of the proposals presented during the advisory committee meetings.

## **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.**

MIOSHA has developed guidance for the proposed rules. The guidance assists employers with complying with the emergency rules. They are currently posted on the MIOSHA website.