

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Labor and Economic Opportunity

2. Bureau:

MIOSHA

3. Promulgation type:

MCL 24.244 (2)

4. Title of proposed rule set:

Part 13. Inspections and Investigations, Citations, and Proposed Penalties

5. Rule numbers or rule set range of numbers:

R 408.22301 - R 408.22361

6. Estimated time frame:

3 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

OSHA has amended its Representatives of Employers and Employees regulation to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party; such third-party employee representative(s) may accompany the OSHA Compliance Safety and Health Officer (CSHO) when, in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to aid in the inspection. In the final rule, OSHA also clarified that a third party may be reasonably necessary because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills. OSHA concluded that these clarifications aid OSHA's workplace inspections by better enabling employees to select representative(s) of their choice to accompany the CSHO during a physical workplace inspection. Employee representation during the inspection is critically important to ensuring OSHA obtains the necessary information about worksite conditions and hazards. These rules are promulgated by the Director of the Michigan Department of Labor and Economic Opportunity and are being adopted, in order to be as effective as the federal Occupational Safety and Health Administration (OSHA) standard 29 CFR 1903.8, "Representatives of Employers and Employees."

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

The director of the department has the specific promulgation authority for the rules.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 408.1016 and 408.1021, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, 2011-4, and 2019-3, MCL 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

The Williams-Steiger Occupational Safety and Health Act of 1970 requires that the Michigan Occupational Safety and Health Administration promulgate standards that are “at least as effective as” those promulgated under Section 6 of the Act.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

These rules are being promulgated under MCL 24.244 to be as effective as OSHA. Therefore, the state standards adopted by these rules are duplicative with the federal standards.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

MIOSHA is not aware of any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda that contains the subject matter of the rules.

11. Are the rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

No, the rules are not listed on the department’s annual regulatory plan as rules to be processed for the current year.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

MCL 24.244 (2)

A. Explain why the rules are being promulgated under 24.244.

These rules are being promulgated under MCL 24.244 to be as effective as OSHA standards as required by the Williams-Steiger Occupational Safety and Health Act of 1970.

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.