

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:

Construction Safety Part 6. Personal Protective Equipment

5. Rule numbers or rule set range of numbers:

R 408.40601 - R 408.40660

6. Estimated time frame:

6 months

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

MIOSHA Construction Safety Standard Part 6, Personal Protective Equipment gives direction to employers and employees on protecting Michigan employees from safety and health hazards in the construction workplace when personal protective equipment is involved.

OSHA has amended the personal protective equipment (PPE) standard for construction, 29 CFR 1926.95(c), to explicitly state that PPE must fit properly. This revision will align the language in the PPE standard for construction with the corresponding language in OSHA's PPE standards for general industry and shipyards and affirm OSHA's interpretation of its PPE standard for construction as requiring properly fitting PPE. Properly fitting PPE is a critical element of an effective occupational safety and health program. PPE must fit properly to provide appropriate protection to employees from workplace hazards. Improperly fitting PPE may fail to provide any protection to an employee, reduce the effectiveness of protection, present additional hazards, or discourage employees from using such equipment in the workplace.

MIOSHA is amending these rules to be at least as effective as the standards adopted by the United States Department of Labor, Occupational Safety and Health Administration (OSHA) which is within the U.S. Department of Labor, "Personal Protective Equipment (PPE)", 29 CFR § 1926.95 (c).

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

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

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

The Michigan Occupational Safety and Health Act, 1974 PA 145, MCL 408.1014, MCL 408.1016, MCL 408.1019, MCL 408.1021, and MCL 408.1024. Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, 2011-4 and 2019-3, MCL 330.3101, 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 MIOSHA promulgate standards that are “at least as effective as” those promulgated under Section 6 of the Act. Promulgation is mandated by MCL 408.1014(5) requiring MIOSHA to, within 10 working days, begin the processing of an administrative rule that is substantially similar to the federal occupational safety and health standard promulgated under the federal Occupational Safety and Health Act of 1970, Public Law 91-596.

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 do not conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

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(2) to be as effective as United States Department of Labor, Occupational Safety and Health Administration (OSHA), as required by the Williams-Steiger Occupational Safety and Health Act of 1970. The rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

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.