



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 9, 2021

NOTICE OF FILING

ADMINISTRATIVE RULES

To: Secretary of the Senate
Clerk of the House of Representatives
Joint Committee on Administrative Rules
Michigan Office of Administrative Hearings and Rules (Administrative Rules #20-045-LE)
Legislative Service Bureau (Secretary of State Filing #21-03-02)
Department of Labor and Economic Opportunity

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Administrative Rule #2020-045-LE (Secretary of State Filing #21-03-02) on this date at 3:40 P.M. for the Department of Labor and Economic Opportunity entitled, "Construction Safety and Health Standard Part 6. Personal Protective Equipment."

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

Sincerely,

Jocelyn Benson
Secretary of State

A handwritten signature in cursive script that reads "Melissa Malerman /CK".

Melissa Malerman, Departmental Supervisor
Office of the Great Seal

Enclosure



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

March 9, 2021

The Honorable Jocelyn Benson
Secretary of State
Office of the Great Seal
Richard H. Austin Building – 1st Floor
430 W. Allegan
Lansing, MI 48909

Dear Secretary Benson:

Re: Administrative Rules – Michigan Office of Administrative Hearings and Rules
Administrative Rules #: 2020-45 LE

The Michigan Office of Administrative Hearings and Rules received administrative rules, dated January 1, 2021, for the Department of Labor and Economic Opportunity - **“Construction Safety and Health Standard Part 6. Personal Protective Equipment”**. We are transmitting these rules to you pursuant to the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6.

Sincerely,

Administrative Rules Analyst
Michigan Office of Administrative Hearings and Rules



Since 1941

Legal Division

Kevin H. Studebaker, Director

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed rules of the Department of Labor and Economic Opportunity dated January 5, 2021, amending R 408.40601, R 408.40615, R 408.40616, R 408.40617a, and R 408.40636 and rescinding R 408.40624a of the Department's rules entitled "Construction Safety and Health Standard Part 6. Personal Protective Equipment." I approve the rules as to form, classification, and arrangement.

Pursuant to section 44(2) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.244(2), these rules are being processed without a public hearing.

Dated: January 14, 2021

LEGISLATIVE SERVICE BUREAU

By

Elizabeth R. Edberg,
Legal Counsel



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated January 5, 2021, in which the Department of Labor and Economic Opportunity proposes to modify a portion of the Michigan Administrative Code entitled “**Construction Safety and Health Standard – Part 6. Personal Protective Equipment**” by:


- ◆ Amending R 408.40601, R 408.40615, R 408.40616, R 408.40617a, and R 408.40636.
- ◆ Rescinding R 408.40624a.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: January 28, 2021

Michigan Office of Administrative Hearings and Rules

By: 
Katie Wienczewski,
Attorney



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
LANSING

SUSAN CORBIN
ACTING DIRECTOR

CERTIFICATE OF ADOPTION

By authority conferred on the Director of the Department of Labor and Economic Opportunity by sections 14, 16, 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014, 408.1016, 408.1019, 408.1021, and 408.1024, and 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

R 408.40601, R 408.40615, R 408.40616, R 408.40617a, and R 408.40636 of the Michigan Administrative Code are amended, and R 408.40624a is rescinded.

Date: 1/15/2021

Adopted by: *Susan R. Corbin*

Susan R. Corbin
Acting Director
Department of Labor and Economic Opportunity

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

DIRECTOR'S OFFICE

CONSTRUCTION SAFETY AND HEALTH STANDARD

Filed with the secretary of state on March 9, 2021

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of labor and economic opportunity by sections 14, 16, 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014, 408.1016, 408.1019, 408.1021, and 408.1024, and 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)

R 408.40601, R 408.40615, R 408.40616, R 408.40617a, and R 408.40636 of the Michigan Administrative Code are amended, and R 408.40624a is rescinded, as follows:

PART 6. PERSONAL PROTECTIVE EQUIPMENT

R 408.40601 Scope, adoption, and availability.

Rule 601. (1) This standard provides specifications for personal protective equipment and prescribes the use, selection, and maintenance of this equipment for the protection of the employee's head, face, eyes, hands, feet, and body during construction operations.

(2) Hearing protection must be in compliance with Occupational Health Standard Part 680. "Occupational Noise Exposure."

(3) Respiratory protection must be in compliance with General Industry and Construction Safety and Health Standard Part 451. "Respiratory Protection."

(4) Protective equipment, including personal protective equipment for eyes, face, head, hands, feet, and body, protective clothing, and protective shields and barriers, must be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

(5) The following federal Occupational Safety and Health Administration (OSHA) regulations are adopted by reference in these rules:

(a) 29 CFR 1926.28 "Personal protective equipment," as in effect as of the effective date of these rules.

(b) 29 CFR 1926.100 "Head protection," as amended July 23, 2012.

(c) 29 CFR 1926.102 "Eye and face protection," as amended March 25, 2016.

January 5, 2021

(d) 29 CFR 1926.97 “Electrical protective equipment,” as amended July 10, 2014.

(e) 29 CFR 1926.105 “Safety nets,” as amended August 2, 1995.

(6) A reference to 29 CFR part 1926, subpart E “Personal Protective and Life Saving Equipment,” means the following standards:

(a) Construction Safety and Health Standard Part 6. “Personal Protective Equipment.”

(b) Occupational Health Standard Part 680. “Occupational Noise Exposure.”

(c) General Industry and Construction Safety and Health Standard Part 451. “Respiratory Protection.”

(7) The adopted federal regulations have the same force and effect as a rule promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(8) The American National Standard Institute ANSI Standard Z-41 “Personal Protection - Protective Footwear,” 1991 edition, is adopted by reference in these rules. This standard is available at the Document Center, Inc., Customer Service, 121 Industrial Road, Suite 8, Belmont, California 94002, USA, telephone: (650) 591-7600 or via the internet at the company's website, www.document-center.com, at a cost as of the time of adoption of these rules of \$49.95.

(9) The OSHA regulations adopted in these rules are available from the United States Department of Labor, Occupational Safety and Health Administration website, www.osha.gov, at no charge, as of the time of adoption of these rules.

(10) The standards adopted in these rules are available for inspection at the Department of Labor and Economic Opportunity, MIOSHA, Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30645, Lansing, Michigan, 48909-8145.

(11) The standards adopted in these rules may be obtained from the publisher or the Department of Labor and Economic Opportunity, MIOSHA, Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30645, Lansing, Michigan, 48909-8145, at the cost charged in this rule, plus \$20.00 for shipping and handling.

(12) The following Michigan Occupational Safety and Health Administration (MIOSHA) standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Department of Labor and Economic Opportunity, MIOSHA, Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30645, Lansing, Michigan, 48909-8145 or via the internet at the following website: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(a) Construction Safety Standard Part 45. “Fall Protection,” R 408.44501 to R 408.44502.

(b) General Industry and Construction Safety and Health Standard Part 451. “Respiratory Protection,” R 325.60051 to R 325.60052.

(c) Occupational Health Standard Part 680. “Occupational Noise Exposure,” R 325.60131.

R 408.40615 Definitions, H to R.

Rule 615. (1) “Helmet,” also called a hard hat or cap, means a device that is worn on the head and that is designed to provide limited protection against impact, flying particles, or electric shock.

(2) "Lanyard" means a rope, suitable for supporting 1 person. One end is fastened to a safety belt or harness and the other end is secured to a substantial object or a safety line.

(3) "Lifeline" means a rope, suitable for supporting 1 person, to which a lanyard or safety belt (or harness) is attached.

(4) "Manufacturer" means a business entity that marks or directs the permanent marking of the components or complete devices as compliant with this standard and sells them as compliant.

(5) "Metatarsal guards" mean guards that are designed to protect the top of the foot from the toes to the ankle over the instep of the foot. These guards may be attached to the outside of shoes.

(6) "O.D." means optical density and refers to the light refractive characteristics of a lens.

(7) "Protective footwear" means footwear that is designed, constructed, and classified to protect the wearer from a potential hazard or hazards.

(8) "Radiant energy" means energy that travels outward in all directions from its sources.

R 408.40616 Definitions, S, T.

Rule 616. (1) "Safety belt" means a device, usually worn around the waist which, by reason of its attachment to a lanyard and lifeline or a structure, will prevent a worker from falling.

(2) "Safety line" means a device used for emergency rescue work.

(3) "Sanitizing" means an act or process of destroying organisms that may cause disease.

(4) "Shell" means the portion of welding helmet or handshield that covers the wearer's face and is the part of a helmet which includes the outermost surface.

(5) "Toe guards" means the guards that fit over the toes of regular shoes to protect the toes from impact and compression hazards. These guards may be attached to the outside of shoes.

PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT.

R 408.40617a Payment for personal protective equipment (PPE).

Rule 617a. (1) An employer shall provide at no cost to employees the personal protective equipment necessary to protect against hazards that the employer is aware of as a result of any required assessments.

(2) An employer shall pay for replacement PPE, as necessary, under either of the following conditions:

(a) When the PPE no longer provides the protection it was designed to provide.

(b) When the previously provided PPE is no longer adequate or functional.

(3) When an employee has lost or intentionally damaged the PPE issued to him or her, an employer is not required to pay for its replacement and may require the employee to pay for its replacement.

(4) An employer is not required to pay for prescription safety eyewear with removable or permanent sideshields as long as the employer provides safety eyewear that fits over an employee's prescription lenses.

(5) An employer is not required to pay for non-specialty prescription safety eyewear, provided that the employer permits these items to be worn off the job-site.

(6) An employer is not required to pay for non-specialty safety-toe protective footwear, including steel-toe shoes or steel-toe boots, provided that the employer permits these items to be worn off the job-site.

(7) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(8) An employer is not required to pay for either of the following:

(a) Everyday clothing, which includes any of the following:

- (i) Long-sleeve shirts.
- (ii) Long pants.
- (iii) Street shoes.
- (iv) Normal work boots.
- (v) Ordinary clothing.
- (vi) Skin creams.

(b) Other items used solely for protection from weather, which includes any of the following:

- (i) Winter coats.
- (ii) Jackets.
- (iii) Gloves.
- (iv) Parkas.
- (v) Rubber boots.
- (vi) Hats.
- (vii) Raincoats.
- (viii) Ordinary sunglasses.
- (ix) Sunscreen.

(9) An employer shall pay for protection when ordinary weather gear is not sufficient to protect an employee and special equipment or extraordinary clothing is needed to protect the employee from unusually severe weather conditions. Clothing used in artificially-controlled environments with extreme hot or cold temperatures, such as freezers, is not considered part of the weather gear exception.

(10) All of the following apply to upgraded and personalized PPE:

(a) An employer is not required to pay for PPE requested by an employee that exceeds the PPE requirements, provided that the employer provides PPE that meets the standards at no cost to the employee.

(b) If an employer allows an employee to acquire and use upgraded or personalized PPE, then the employer is not required to reimburse the employee for the equipment, provided that the employer has provided adequate PPE at no cost to the employee.

(c) An employer shall evaluate an employee's upgraded or personalized PPE to ensure that it is in compliance with all of the following:

- (i) Adequate to protect from hazards present in the workplace.
- (ii) Properly maintained.

(iii) Kept in a sanitary condition.

(11) When the provisions of another MIOSHA standard specify whether the employer shall pay for specific equipment, the payment provisions of that standard prevails.

R 408.40624a Rescinded.

WORKING OVER OR NEAR WATER

R 408.40636 Working over or near water.

Rule 636. (1) Where a possibility of drowning exists, each employee working over or adjacent to water shall wear a life jacket or buoyant work vest. The life jacket or buoyant vest shall bear a label, "U.S. Coast Guard approved."

(2) Before and after each use, a competent person shall inspect the life jacket or buoyant vest for defects which might alter its strength or buoyancy. Defective units shall not be used.

(3) A ring buoy with not less than 90 feet of safety line shall be provided and shall be readily available for rescue operations. The distance between the buoys shall not be more than 200 feet.

(4) Not less than 1 lifesaving boat equipped with a method of propulsion that is effective for the water conditions shall be available at the location where an employee works over or adjacent to water.