



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

September 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 #21-035-LE)
Legislative Service Bureau (Secretary of State Filing #21-09-01)
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 #2021-035-LE (Secretary of State Filing #21-09-01) on this date at 2:51 P.M. for the Department of Labor and Economic Opportunity entitled, "Safety and Health Standard Part 11. Recording and Reporting of Occupational Injuries and Illnesses".

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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

Adam Fracassi /UC

Adam Fracassi, Departmental Supervisor
Office of the Great Seal

Enclosure



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

September 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 #: 2021-35 LE

The Michigan Office of Administrative Hearings and Rules received administrative rules, dated July 8, 2021 for the Department of Labor and Economic Opportunity “**Safety & Health Standard Pt. 11 Recording & Reporting of Occupational Injuries and Illnesses**”. 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,

Michigan Office of Administrative Hearings and Rules



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 department of labor and economic opportunity by section 69 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1069, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, 2011-4, 2019-3, MCL 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998.

R 408.22102a, R 408.22103, R 408.22104, R 408.22107, R 408.22133, R 408.22151, and R 408.22156 of the Michigan Administrative Code are amended.

Date: 7/23/2021

Adopted by: *Susan R. Corbin*
Susan R. Corbin
Acting Director
Department of Labor and Economic Opportunity



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 July 8, 2021, in which the Department of Labor and Economic Opportunity proposes to modify a portion of the Michigan Administrative Code entitled “**MIOSHA Safety and Health Standard Part 11. Recording and Reporting of Occupational Injuries and Illnesses**” by:

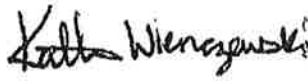
- ◆ Amending R 408.22102a, R 408.22103, R 408.22104, R 408.22107, R 408.22133, R 408.22151, and R 408.22156.

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: July 20, 2021

Michigan Office of Administrative Hearings and Rules

By: 
Katie Wienczewski,
Attorney



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 July 8, 2021, amending R 408.22102a, R 408.22103, R 408.22104, R 408.22107, R 408.22133, R 408.22151, and R 408.22156 of the Department's rules entitled "MIOSHA Safety and Health Standard Part 11. Recording and Reporting of Occupational Injuries and Illnesses." 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: July 19, 2021

LEGISLATIVE SERVICE BUREAU

By

Elizabeth R. Edberg,
Legal Counsel

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

DIRECTOR'S OFFICE

MIOSHA SAFETY AND HEALTH STANDARD

Filed with the secretary of state on September 9, 2021

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 department of labor and economic opportunity by section 69 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1069, 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)

R 408.22102a, R 408.22103, R 408.22104, R 408.22107, R 408.22133, R 408.22151, and R 408.22156 of the Michigan Administrative Code are amended, as follows:

PART 11. RECORDING AND REPORTING OF OCCUPATIONAL INJURIES AND ILLNESSES

R 408.22102a Adopted and referenced standards.

Rule 1102a. (1) The following federal standards are adopted by reference in these rules:

(a) 29 CFR 1903.2, "Posting of notice; availability of the Act, regulations and applicable standards," amended July 1, 2016.

(b) 45 CFR 164.512, "Uses and disclosures for which an authorization or opportunity to agree or object is not required," amended May 12, 2016.

(2) The standards adopted in these rules are available from the United States Government Printing Office website: www.ecfr.gov, at no charge as of the time of adoption of these rules.

(3) The standards adopted in these rules are available for inspection at the Department of Labor and Economic Opportunity, MIOSHA, Standards and FOIA Section, P.O. Box 30643, Lansing, Michigan, 48909-8143.

(4) The standards adopted in these rules may be obtained as shown in these rules or may be obtained from the Department of Labor and Economic Opportunity, MIOSHA, Standards and FOIA Section, P.O. Box 30643, Lansing, Michigan, 48909-8143, plus \$20.00 for shipping and handling.

(5) The following 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, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at 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.

July 8, 2021

(a) Occupational Health Standard Part 380. "Occupational Noise Exposure in General Industry," R 325.60101 to R 325.60128.

(b) General Industry Safety and Health Standard Part 554. "Bloodborne Infectious Diseases," R 325.70001 to R 325.70018.

R 408.22103 Exceptions; applicability; petitions.

Rule 1103. (1) Both of the following provisions apply to exemptions based on employee numbers and industry classifications:

(a) If your company had 10 or fewer employees at all times during the last calendar year, you do not need to keep MIOSHA injury and illness records unless MIOSHA, the United States Bureau of Labor Statistics (BLS), or the United States Department of Labor Occupational Safety and Health Administration (OSHA), informs you, in writing, that you must keep records according to R 408.22141, R 408.22141a, R 408.22141b, or R 408.22142. However, as required by R 408.22139, all employers covered by the act shall report to MIOSHA any workplace incident that results in a fatality, inpatient hospitalization, amputation, or loss of an eye.

(b) If your company had more than 10 employees at any time during the last calendar year, you must keep MIOSHA injury and illness records unless your establishment is classified as a partially exempt industry under this rule.

(2) Both of the following provisions apply to implementation of employee number based exemptions:

(a) Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment? The partial exemption for size is based on the number of employees in the entire company.

(b) How do I determine the size of my company to find out if I qualify for the partial exemption for size? To determine if you are exempt because of size, you must determine your company's peak employment during the last calendar year. If you did not have more than 10 employees at any time in the last calendar year, then your company qualifies for the partial exemption for size.

(3) Both of the following provisions apply to basic requirements for partial exemption for establishments in certain industries:

(a) If your business establishment is classified in a specific industry group listed in Appendix A, you do not need to keep MIOSHA injury and illness records unless MIOSHA, the United States Bureau of Labor Statistics (BLS), or the United States Department of Labor Occupational Safety and Health Administration (OSHA), informs you, in writing, that you must keep the records according to R 408.22141, R 408.22141a, R 408.22141b, or R 408.22142. However, all employers must report to MIOSHA any workplace incident that results in an employee's fatality, inpatient hospitalization, amputation, or loss of an eye as required by R 408.22139.

(b) If 1 or more of your company's establishments are classified in a nonexempt industry, then you must keep MIOSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under these rules.

(4) Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company? The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of

business activities, some of the company's establishments may be required to keep records, while others may be partially exempt.

(5) How do I determine the correct North American Industry Classification System (NAICS) code for my company or for individual establishments? You may determine your NAICS code by using 1 of the following methods, or you may contact your nearest OSHA office or state agency for help in determining your NAICS code:

(a) You may use the search feature at the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>. In the search box for the most recent NAICS, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the 1 code that most closely corresponds to your primary business activity, or refine your search to obtain other choices.

(b) Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main Web page:

<https://www.census.gov/naics>. Then click on the 2-digit sector code to see all the NAICS codes under that sector. Then choose the 6-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.

(c) If you know your old standard industrial classification (SIC) code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the "Concordances" link at the U.S. Census Bureau NAICS main Web page: <https://www.census.gov/naics>.

(6) The department of labor and economic opportunity shall supply copies of the forms provided for in these rules and compile, correct, and analyze data obtained pursuant to these rules. The department shall process petitions for exceptions to these rules from public employers. The Occupational Safety and Health Administration (OSHA) of the United States Department of Labor shall process petitions for exceptions from private employers to ensure uniformity between federal and state rules.

R 408.22104 Definitions; A to D.

Rule 1104. (1) "Act" means the Michigan occupational safety and health act (MIOSHA), 1974 PA 154, MCL 408.1001 to 408.1094.

(2) "Affected employee" means an employee who is affected by the granting or denial of an exception, or an authorized representative as defined by the act.

(3) "Amputation" means the traumatic loss of a limb or other external body part. Amputation includes all of the following:

(a) A part, such as a limb or appendage, that has been severed, cut off, or amputated, either completely or partially.

(b) Fingertip amputations with or without bone loss.

(c) Medical amputations resulting from irreparable damage.

(d) Amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.

(4) "Department" means the department of labor and economic opportunity.

(5) "Director" means the director of the department of labor and economic opportunity.

R 408.22107 Definitions; O to Y.

Rule 1107. (1) "Occupational injury or illness" means an abnormal condition or disorder. Occupational injury is a result of a work accident or from an exposure involving a single incident in the work environment and includes, but is not limited to, a cut, fracture, sprain, or amputation. Occupational illnesses include both acute and chronic illnesses, including, but not limited to, a skin disease, respiratory disorder, or poisoning. Injuries and illnesses are recordable only if they are new, work-related cases that meet 1 or more of the recording criteria of these rules.

(2) "Other potentially infectious material" means other potentially infectious material as defined in General Industry Safety and Health Standard Part 554. "Bloodborne Infectious Diseases," as referenced in R 408.22102a. These materials include the following:

(a) Human bodily fluids, tissues, and organs.

(b) Other materials infected with the HIV or hepatitis B (HBV) virus, such as laboratory cultures or tissues from experimental animals.

(3) "Physician or other licensed health care professional" means a physician or other licensed health care professional who is an individual and whose legally permitted scope of practice, that is, license, registration, or certification, allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by these rules.

(4) "Recordable injuries and illness" means an injury or illness that meets the general recording criteria, and therefore is recordable, if it results in any of the following:

(a) Death.

(b) Days away from work.

(c) Restricted work or transfer to another job.

(d) Medical treatment beyond first-aid.

(e) Loss of consciousness.

An employer must also consider a case as meeting the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first-aid, or loss of consciousness.

(5) "Standard threshold shift" means a change in the hearing threshold relative to the baseline audiogram of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

(6) "You" means an employer as defined in section 5 of the act, MCL 408.1005.

R 408.22133 Retention and updating.

Rule 1133. (1) Basic requirement. You must save the MIOSHA 300 Log, the privacy case list, if one exists, the annual summary, and the MIOSHA 301 Incident Report forms for 5 years following the end of the calendar year that these records cover.

(2) All of the following apply to implementation of subrule (1) of this rule:

(a) Am I required to update the MIOSHA 300 Log during the 5-year storage period? Yes, during the storage period, you must update your stored MIOSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

(b) Am I required to update the annual summary? No, you are not required to update the annual summary, but you may do so if you wish.

(c) Am I required to update the MIOSHA 301 Incident Report? No, you are not required to update the MIOSHA 301 Incident Report, but you may do so if you wish.

R 408.22151 Public employer petition for alternate record maintenance.

Rule 1151. A public employer who wishes to maintain records in a manner different from that required by this part shall submit a petition containing the information prescribed in R 408.22153 to the Department of Labor and Economic Opportunity, MIOSHA, Box 30643, Lansing, Michigan 48909.

R 408.22156 Notice of exception; publication.

Rule 1156. Notice that an exception has been granted as prescribed by this part must be published in the MIOSHA News, a quarterly publication of the department of labor and economic opportunity. This notice may summarize the alternative to the rules involved which the particular exception permits.

FILED WITH SECRETARY OF STATE

ON 9/7/21 AT 2:54 PM