

Michigan Office of Administrative Hearings and Rules
611 West Ottawa Street; 2nd Floor, Ottawa Building
Lansing, MI 48933
Phone: (517) 335-8658 FAX: (517) 335-9512

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Michigan Office of Administrative Hearings and Rules (MOAHR) at o'berryd@michigan.gov.

1. Agency Information:

Agency name:	Licensing and Regulatory Affairs	
Division/Bureau/Office:	Michigan Occupational Safety and Health Administration (MIOSHA)	
Name, title, phone number, and e-mail of person completing this form:	Shannon Matsumoto, Program Manager matsumotos@michigan.gov 517.284.7734	
Name of Departmental Regulatory Affairs Officer reviewing this form:		

2. Rule Set Information:

ORR assigned rule set number:	2017-084 LR
Title of proposed rule set:	Construction Safety and Health Standard Part 14. Tunnels, Shafts, Caissons, and Cofferdams

3. Purpose for the proposed rules and background:

CS Part 14 Tunnels, Shafts, Caissons, and Cofferdams gives direction to employers and employees on protecting Michigan employees from health and safety hazards in the workplace when using tunnels, shafts, caissons, and cofferdams.

4. Summary of proposed rules:

These rules will amend and clarify the following rules:

- R 408.41405 Applicability
- R 408.41455 Definitions; A to H.
- R 408.41461 Advance notice of tunnel excavation.
- R 408.41471 Ground support; inspections; repairs.

The above rules will be amended to be more in line with the work that is being done by Michigan employers and employees.

In addition, minor editorial and formatting changes are being made.

5. List names of newspapers in which the notice of public hearing was published and publication dates (attach copies of affidavits from each newspaper as proof of publication).

The date of publication for following two newspapers was Monday, April 8, 2019:

- The Oakland Press
- The Mining Journal

The date of publication for the Lansing State Journal was Wednesday, April 10, 2019.

The affidavits are attached.

6. Date of publication of rules and notice of public hearing in *Michigan Register*:

Issue No. 6 – 2019, published April 15, 2019

7. Time, date, location, and duration of public hearing:

Time:	9:30 am
Date:	May 1, 2019
Location:	Ottawa Building Upper Level Conference Room 6 611 West Ottawa Street, Lansing, Michigan 48933
Duration:	9:32 a.m. to 9:36 a.m. – 4 minutes

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

[https://www.michigan.gov/documents/lara/lara_miosha_2017-084_LR - RIS CS 14_651822_7.pdf](https://www.michigan.gov/documents/lara/lara_miosha_2017-084_LR_-_RIS_CS_14_651822_7.pdf)

9. List of the name and title of agency representative(s) attending public hearing:

Agency Representatives	Agency Name	Title of Representatives
Ronald T. Ray Jr.	LARA MIOSHA Technical Services Division	Division Director
Shannon Matsumoto	LARA MIOSHA Regulatory Services Section	Program Manager
Dena Hendon	LARA MIOSHA Regulatory Services Section	Analyst
Toscha Klopp	LARA MIOSHA Regulatory Services Section	Secretary

Lawrence Hidalgo	LARA MIOSHA Construction Safety and Health Division	Division Director
Eric Allan	LARA MIOSHA Construction Safety and Health Division	Safety Manager

10. Persons submitting comments of support:

Paul Wresinski	Associated General Contractors of Michigan (AGC)	Safety & Health Director
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11. Persons submitting comments of opposition:

No letters, comments, or testimony of opposition were received for CS Part 14 Tunnels, Shafts, Caissons, and Cofferdams.
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12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments Made at Public Hearing	Written Comments	Agency Rationale for Change	Rule Number & Citation Changed
1.	Paul Wresinski Associated General Contractors of Michigan (AGC)	R 408.41461(4) Requests clarification for pressurized tunnels	Followed up with written comments	The change would be to differentiate that the re-notification would be for tunnels that are pressurized. Without this clarification, all occupied tunnels would need to notify MIOSHA even if they did not meet the original qualification.	R 408.41461(4) If the work operations of any occupied and pressurized tunnel projects are discontinued for 30 consecutive days or longer, then the employer shall notify the Construction Safety and Health Division at the Michigan Department of Licensing and Regulatory Affairs, 24 hours before resuming work operations on the tunnel project.

13. Date report completed:

May 14, 2019

AFFIDAVIT OF PUBLICATION

2125 Butterfield Dr, Suite 102N • Troy MI 48084

MIOSHA Standard - Lara
530 W. ALLEGAN P.O. BOX 30643

LANSING, MI 48909
Attention: Dena Hendon

**STATE OF MICHIGAN,
COUNTY OF OAKLAND**

The undersigned Cindy Slater, being duly sworn he/she is the principal clerk of Royal Oak Tribune, Oakland Press, theoaklandpress.com, published in the English language for the dissemination of local or transmitted news and intelligence of a general character, which are duly qualified newspapers, and the annexed hereto is a copy of certain order, notice, publication or advertisement of:

MIOSHA Standard - Lara

Published in the following edition(s):

Oakland Press	04/08/19
theoaklandpress.com	04/08/19
Royal Oak Tribune	04/10/19



Sworn to the subscribed before me this 10th April 2019

Tina M. Crown

Notary Public, State of Michigan
Acting in Oakland County

Advertisement Information

Client Id: 644465

Ad Id: 1779943

PO:

Sales Person: 200301

NOTICE OF PUBLIC HEARING
STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (MIOSHA)
Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams
(ORR# 2017-064 LR)

The Department of Licensing and Regulatory Affairs, Michigan Occupational Safety and Health Administration, will hold a public hearing at the following time and location to allow comment by interested persons on proposed changes to MIOSHA Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams administrative rules:

Date: Wednesday, May 1st, 2019
Time: 9:00 a.m.
Location: Ottawa Building
Upper Level Conference Room 6
811 West Ottawa Street
Lansing, Michigan 48931

MIOSHA Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams gives direction to employers and employees on protecting Michigan employees from health and safety hazards in the workplace when using tunnels, shafts, caissons, and cofferdams. The proposed rules are intended to continue to meet current OSHA requirements and to enhance the safety and health of employees through clarification of the following rules:

- R 408.41405 Applicability.
- R 408.41461(1) Advance notice of tunnel excavation.
- R 408.41471(6) Ground support; inspection; repairs.

In addition, a definition for "auger boring and jacking" is being added to R 408.41455(2) Definitions; A to W. Also, minor editorial and formatting changes are being made. The proposed rules are being amended to be more in line with the work that is being done by Michigan employers and employees.

These rules are being promulgated by sections 19 and 21 of 1974 PA 154, MCL 408.1019 and 408.1021, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030. The rules will take effect immediately upon filing with the Secretary of State, unless specified otherwise in the rules.

The rules are published in the Michigan Register. Copies of the proposed rules may be obtained from the Office of Regulatory Reimbursement website at www.michigan.gov/orr. The proposed rules are available on the MIOSHA website in the Spotlight section at www.michigan.gov/miohsa/spotlights. Copies of the proposed rules may be obtained by mail or electronically, when requested at the address below.

This Notice of Public Hearing is published pursuant to Section 42 of the Administrative Procedures Act, MCL 24.242. The hearing is being held to receive public comments on the proposed amendments to the administrative rules listed above. The hearing will be for the purpose of providing an opportunity for all interested persons to present statements, views, data, questions, or arguments concerning the proposed rules. The public hearing will continue until all parties present have had a reasonable opportunity to present statements regarding the proposed rules. Persons presenting statements may be asked questions by the staff, as well as by the presiding officer. Statements may be limited in duration by the presiding officer in order to ensure that all interested parties have an opportunity to participate in the proceedings.

Interested parties may submit written comments to the following address, no later than 5:00 p.m. on May 1, 2019. Written and electronic comments should be sent to the following address:

Michigan Department of Licensing and Regulatory Affairs
MIOSHA Technical Services Division, Regulatory Services Section
530 West Allegan Street - P.O. Box 30643 - Lansing, MI 48909-8143
Telephone 517.284.7740 - Facsimile 517.284.7735 - E-mail: slonoff@michigan.gov

The hearing site is accessible, including handicap parking. People needing any accommodation to participate should contact Tasha Hogg at 517.284.7746 or lhogg@michigan.gov. At least 14 days in advance to request mobility, visual, hearing, or other assistance. Individuals attending the hearing are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone.

Published: April 8, 2019

The Mining Journal

Upper Michigan's Largest Daily Newspaper

249 W. Washington St., P.O. Box 430, Marquette, Michigan 49855. Phone (906)228-2500. Fax (906)228-3273.

AFFIDAVIT OF PUBLICATION

STATE OF MICHIGAN

AFFIDAVIT OF PUBLICATION

For the County of **MARQUETTE**

In the matter of: Notice of Public Hearing
Department of Licensing and Regulatory Affairs
Michigan Occupational Safety and Health Administration
Construction and Safety and Health Standard Part 14

Size: 3 x 11

State of **MICHIGAN**, County of Marquette ss.

JAMES A. REEVS


being duly sworn, says that he is

PUBLISHER

of **THE MINING JOURNAL**


a newspaper published and circulated in said county and otherwise qualified according to Supreme Court Rule; that annexed hereto is a printed copy of a notice which was published in said newspaper on the following date, or dates, to-wit

April 8, 2019



JAMES A. REEVS

Subscribed and sworn to before me this 8th day of April 2019.



HOLLY GASMAN
Notary Public for MARQUETTE County, Michigan
Acting in the County of Marquette
My commission expires: May 25, 2025

**NOTICE OF PUBLIC HEARING
STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION (MIOSHA)
Construction Safety and Health Standard Part 14 Tunnels,
Shafts, Caissons, and Cofferdams
(ORR# 2017-084 LR)**

The Department of Licensing and Regulatory Affairs, Michigan Occupational Safety and Health Administration, will hold a public hearing at the following time and location to allow comment by interested persons on proposed changes to MIOSHA Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams administrative rules:

Date: Wednesday, May 1st, 2019
Time: 9:30 a.m.
Location: Ottawa Building
Upper Level Conference Room 6
611 West Ottawa Street,
Lansing, Michigan 48933

MIOSHA Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams gives direction to employers and employees on protecting Michigan employees from health and safety hazards in the workplace when using tunnels, shafts, caissons, and cofferdams. The proposed rules are intended to continue to meet current OSHA requirements and to enhance the safety and health of employees through clarification of the following rules:

- R 408.41405 Applicability.
- R 408.41461(1) Advance notice of tunnel excavation.
- R 408.41471(8) Ground support; inspections; repairs.

In addition, a definition for "auger boring and jacking" is being added to R 408.41455(2) Definitions; A to H. Also, minor editorial and formatting changes are being made. The proposed rules are being amended to be more in line with the work that is being done by Michigan employers and employees.

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The rules are published in the Michigan Register. Copies of the proposed rules may be obtained from the Office of Regulatory Reinvention website at www.michigan.gov/orr. The proposed rules are available on the MIOSHA website in the Spotlight section at www.michigan.gov/mioshastandards. Copies of the proposed rules may be obtained by mail or electronically, when requested at the address below.

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Michigan Department of Licensing and Regulatory Affairs
MIOSHA Technical Services Division, Regulatory Services Section
530 West Allegan Street - P.O. Box 30643 - Lansing MI 48909-8143
Telephone 517.284.7740 - Facsimile 517.284.7735 - E-mail:
kloppt@michigan.gov

The hearing site is accessible, including handicap parking. People needing any accommodation to participate should contact Toscha Klopp at 517.284.7740 or kloppt@michigan.gov, at least 14 days in advance to request mobility, visual, hearing, or other assistance. Individuals attending the hearing are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone.

The Mining Journal 5A

Monday, April 8, 2019

AFFIDAVIT OF PUBLICATION

LSJ MEDIA

300 S. Washington Square, Suite 300, Lansing, MI 48933
State of Michigan, County of Livingston

IN THE MATTER OF: NOTICE-LSJ3484924

MIOSHA - REGULATORY SERVICES SECTION

MIOSHA - REGULATORY SERVICES SECTION
530 WEST ALLEGAN STREET
PO BOX 30643

LANSING, MI 48909

Being duly sworn, says that he/she is authorized by the publisher of Lansing State Journal, to swear that a certain notice, a copy of which is annexed here to, was published in the following publication:

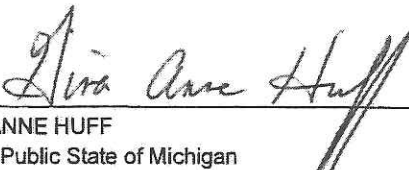
1. Published in the English language for the dissemination of general and/or legal news, and
2. Has a bonfide list of paying customers or has been published at least once a week in the same community without interruption for at least 2 years, and
3. Has been established, published and circulated at least once a week without interruption for at least one (1) year in the community where the publication is to occur.

Lansing State Journal, 04/10/19



 Amy Schmidt

SUBSCRIBED AND SWORN TO BEFORE ME THIS 10th DAY OF April, 2019



 GINA ANNE HUFF
 Notary Public State of Michigan
 County of Livingston
 My commission expires March 9, 2023

Acting in the County of Livingston

0003484924, 5172847736MIOS

LSJ-LSJ-Lansing State Journal

NOTICE OF PUBLIC HEARING

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (MIOSHA)

Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams (ORR# 2017-084 LR)

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- R 408.41471(8) Ground support; inspections; repairs.

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LSJ3484924

04/08/2019



ASSOCIATED GENERAL CONTRACTORS

June 3, 2019

Mr. Eric Allen
Safety and Health Manager
MIOSHA Construction Safety and Health Division
P.O. Box 30013
Lansing, Michigan 48909

2323 N. Larch St.
Lansing, MI 48906
517.371.1550

26001 Five Mile Rd.
Redford, MI 48239

agcmichigan.org

Dear Mr. Allen,

This letter has been provided at your request to the comments that were provided by Mr. Paul Wrzesinski at the public hearing held on May 1, 2019 regarding the proposed changes to the CONSTRUCTION SAFETY AND HEALTH STANDARD PART 14. TUNNELS, SHAFTS, CAISSONS, AND COFFERDAMS.

The rule in questions was rule R408. 41461 (4)) If the work operations of any occupied tunnel projects are discontinued for 30 consecutive days or longer, then the employer shall notify the Construction Safety and Health Division at the Michigan Department of Licensing and Regulatory Affairs, construction safety and health division at the Michigan department of licensing and regulatory affairs, 24 hours before resuming work operations on the tunnel project.

Would this rule apply to "any tunnel project" that is occupied under atmospheric conditions or only those that are pressurized during construction, modification, or repair and are more than 24 inches in diameter?

Sincerely,

Paul Wrzesinski

Director of Safety Health

Associated General Contractors of Michigan.

