

State Budget Office
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
 and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

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 Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

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| Agency name: | Licensing and Regulatory Affairs |
| Division/Bureau/Office: | Michigan Occupational Safety and Health Administration |
| 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: | Liz Arasim Department of Licensing and Regulatory Affairs |

2. Rule Set Information

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| 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 |

PART 2: KEY SECTIONS OF THE APA

24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
- (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
- (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
- (d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

- (a) 0-9 full-time employees.
- (b) 10-49 full-time employees.
- (c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5].

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams is currently ‘as effective as’ OSHA 1926.800 Underground Construction, Caissons, Cofferdams and Compressed Air, in all the requirements, as required by federal mandate.

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.

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

A. Are these rule(s) required by state law or federal mandate?

Portions of these rules are required to be ‘at least as effective as’ federal OSHA.

B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The base rules are ‘as effective as’ OSHA 1926.800 Underground Construction, Caissons, Cofferdams and Compressed Air.

The proposed rules are making changes to the following rules, but the revisions are not required by OSHA:

- R 408.41405 Applicability.
- R 408.41455(2) Definitions; A to H. – adding a definition of “auger boring and jacking”.
- R 408.41461(1) Advance notice of tunnel excavation.
- R 408.41471(8) Ground support; inspections; repairs.

The costs for compliance due to these revisions are minimal.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules are different from the federal OSHA rules. Federal OSHA rules do not have a definition for auger boring and jacking. Federal OSHA rules do not require an employer to notify Federal OSHA before constructing a tunnel. The rules in Ohio, Indiana and Illinois are the same as the federal rules.

A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

The proposed rules are intended to clarify unclear rules. This will eliminate confusion and give clear instructions to employers and employees to reduce the likelihood of bodily harm or death. The costs for compliance due to these revisions are minimal.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s).

There are no federal, state, or local laws, rules, or other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

MIOSHA has changed its rules to provide a better description of existing rules to make it easier for employers to understand the current rules.

Purpose and Objectives of the Rule(s):

4. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

The current rules require advance notice of tunnel excavation under specific circumstances. No change is being proposed in the frequency of reporting. The rules are being revised only for clarification.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

The current rules require advance notice of tunnel excavation under specific circumstances. No change is being proposed in the frequency of reporting. The rules are being revised only for clarification.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The current rules require advance notice of tunnel excavation under specific circumstances. No change is being proposed in the frequency of reporting. The rules are being revised only for clarification.

C. What is the desired outcome?

A modification to the rule uses the term “auger boring and jacking operation” in place of “pipe” therefore a definition of the term is required. This term is consistent with industry language.

5. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The likelihood of bodily harm or death to an employee will be reduced by the proposed rules due to the clarification of already required procedures.

A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

MIOSHA’s intent is to clarify unclear rules that affect the health and safety of Michigan workers.

6. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

By clarifying the proposed rules, it will eliminate confusion and give clear instructions to employers and employees to reduce the likelihood of bodily harm or death.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The rules were reviewed by the ORR Workplace Safety Advisory Rules Committee on January 27, 2012, and obsolete or unnecessary rules were removed on April 29, 2013.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

Printing and distribution of the rules are estimated to be \$200. In-house training for MIOSHA staff is estimated to be \$2,000.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

The agency has a training budget that includes educating its employees on revisions to standards.

10. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

No additional burdens because the changes will be included in the already required training.

A. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

No burdens have been identified.

Impact on Other State or Local Governmental Units:

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for such other state or local governmental units as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There is no increase or decrease in revenues anticipated.

A. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There is no cost increase or reduction anticipated.

12. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

No program, service, duty, or responsibility will be imposed upon any city, county, town, village, or school district by the proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no actions that governmental units must take to comply with the proposed rules.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No appropriation has been made or is needed.

Rural Impact:

14. In general, what impact will the rule(s) have on rural areas?

The proposed rules will not have a disproportionate impact based on geographic location.

A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The proposed rules will not have a disproportionate impact on public or private interests in rural areas.

Environmental Impact:

15. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

There is no anticipated impact on the environment.

Small Business Impact Statement:

16. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

MIOSHA does not anticipate that small businesses will be affected disproportionately by the proposed rules.

17. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

MIOSHA rules are required to be enforced by all employers and employees, no matter the size of business.

- A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

The proposed rules will affect very few businesses. There are approximately 35 companies in Michigan that the proposed rules will affect. It is estimated that approximately 15 are small businesses.

- B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

There are no differing compliance or reporting requirements or timetables for small businesses by the proposed rules.

- C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

There are no compliance or reporting requirements that are unique to small businesses.

- D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

MIOSHA did not establish performance standards to replace design or operation standards required by the proposed rules.

18. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rules will not have a disproportionate impact on small businesses based on their size or geographic location.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

There are no new reporting requirements for small businesses under the proposed rules.

20. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The costs for compliance due to these revisions are minimal.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

There are no estimated costs of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

As the estimated costs are minimal, MIOSHA is anticipating that small businesses will not suffer any substantial economic harm in complying with the proposed rules.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There will be no cost to the agency because there are no exemption or lesser standards for small businesses.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Exempting or setting lesser standards of compliance for small businesses may have a negative effect on the health, safety, and welfare of the employees of the State of Michigan. Consequently, there are no exemption or lesser standards for small businesses.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

The proposed changes were recommended by the Michigan Infrastructure & Transportation Association (MITA), which represents more than 600 companies across the state that work on the state's roads, bridges, and underground and utility systems.

- A. If small businesses were involved in the development of the rule(s), please identify the business(es).

The proposed changes were recommended by MITA.

Cost-Benefit Analysis of Rules (independent of statutory impact):

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

Not having to report all tunneling activities should save employers money. MIOSHA is changing the term "pipe augering operations" to "auger boring and jacking operations" as requested by industry. This should have no additional compliance costs. The terminology was changed to reflect industry language.

- A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

There are approximately 35 companies in Michigan that the proposed rules will affect.

- B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

Not needing to report all tunneling activities should not require additional costs. This should save the employer reporting costs. MIOSHA is changing the term "pipe augering operations" to "auger boring and jacking operations" as requested by industry. This should have not additional costs.

27. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

There are no compliance costs to individuals.

- A. How many and what category of individuals will be affected by the rules?

There are approximately 500 employees in the state of Michigan performing augering boring and jacking operations.

B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The likelihood of bodily harm or death to an employee will be reduced by the proposed rules due to the clarification of already required procedures.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

It is not anticipated that these groups will see any cost reductions.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules will benefit the health and safety of Michigan workers by providing a safer work environment.

30. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

It is not anticipated that the proposed rules will impact business growth and job creation in Michigan.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There are no individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

The source we relied upon to complete this document is the knowledge of MIOSHA staff.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

If employers follow existing rules, there should not be additional cost from the proposed rules.

Alternatives to Regulation:

33. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

No alternative is feasible.

A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

The alternatives are to have employers continue to report to MIOSHA all tunnel and tunnel boring operations and to keep the current definition.

34. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would

operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

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| There is no activity involved in these changes, therefore there is no activity for a private market-based system to perform. |
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35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

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| The alternatives are to have employers continue to report to MIOSHA all tunnel and tunnel boring operations and to keep the current definition. MIOSHA worked with the Michigan Infrastructure and Transportation Association and its member contractors. |
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Additional Information:

36. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

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| No instructions are available. |
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 ↓ To be completed by the ORR ↓

PART 4: REVIEW BY THE ORR

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| Date RISCBA received: | 2-11-2019 |
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| Date RISCBA approved: | 2/21/19 |
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| Date of disapproval: | |
| Explanation: | |