

State Budget Office  
**Office of Regulatory Reinvention**  
111 S. Capitol Avenue; 8th Floor, Romney Building  
Lansing, MI 48933  
Phone: (517) 335-8658 FAX: (517) 335-9512

## REQUEST FOR RULEMAKING (RFR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the department/agency that has the statutory authority to promulgate the rules must file a request for rulemaking with the Office of Regulatory Reinvention before initiating any changes or additions to the rules. Please submit an electronic copy to the ORR at [orr@michigan.gov](mailto:orr@michigan.gov).

**1. Department:**

Michigan Occupational Safety and Health Administration (MIOSHA)

**2. Division/agency/bureau:**

MIOSHA Technical Services Division - MIOSHA Regulatory Services Section

**3. Name, address, e-mail, and phone number of agency contact person:**

Daniel Dykstra, Program Manager  
Mason Building  
530 West Allegan Street – Lansing Michigan 48933  
[dykstrad@michigan.gov](mailto:dykstrad@michigan.gov)  
517.284.7734

**4. Title of proposed rule(s) or rule set:**

Construction Safety and Health Standard Part 14 Tunnels, Shafts, Caissons, and Cofferdams

**5. Rule number(s) or rule set range of numbers:**

R 408.41401 - R 408.41483

**6. Estimated timetable for completion, or statutory deadline, if applicable:**

6 months

**7. Describe the general goal/purpose of these rules. Include a discussion of the problem(s) - the rule rescissions, additions, or amendments intended to address:**

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.

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 throughout the rule set.

**8. Please cite the specific promulgation authority for the rule(s) (i.e. department director, commission, board, etc.), listing all applicable statutory references. Are the rule(s) mandated by any applicable constitutional or statutory provision? If so, please explain.**

The Williams-Steiger Occupational Safety and Health Act of 1970 requires that the Michigan Occupational Safety and Health Act promulgate standards that are “at least as effective as” those promulgated under Section 6 of the Act, Sections 19 and 21 of Act No. 154 of 1974, as amended, being MCL 408.1019 and MCL 408.1021.

**9. Please describe the extent to which the rule(s) conflict with or duplicate similar rules or regulations adopted by the state or federal government [include statutory references and public acts, as applicable]:**

MIOSHA is not aware of any conflict or duplication.

**10. Is the subject matter of the rule(s) currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?**

None, that MIOSHA is aware of.

**11. Is the rule(s) listed on the department’s annual regulatory plan as a rule to be processed for the current year?**

No it is not. The proposed changes were brought forward by industry representatives after submission of MIOSHA’s annual regulatory plan requesting that MIOSHA make the changes.

**12. Will the proposed rule(s) be promulgated under Sections 44 or 48 of the Administrative Procedures Act, 1969 PA 306, as amended, being MCL 24.244 or**

**24.248? Will the rule(s) be promulgated under the full rulemaking process? Please explain.**

These proposed rules are more restrictive than Federal OSHA. Therefore, these rules are being promulgated under the full rulemaking process as specified in the Administrative Procedures Act and a public hearing is required.

**Note:** If this request for rulemaking applies to rules that will be promulgated pursuant to **Sections 44 or 48** of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.244 or 24.248, you do not have to answer questions 13 to 18.

**13. Please describe the extent to which the rule(s) exceed national or regional compliance requirements or other standards:**

These rules are being amended.

- 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.

These changes go beyond OSHA regulations, but support the actual work that is be done by Michigan employers and employees.

**14. Do the rule(s) incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5? If yes, please explain.**

No Advisory Rules Committee was formed.

**15. Do the rule(s) incorporate the recommendations received from the public regarding any complaints or comments regarding the rule(s)? If yes, please explain.**

No. The proposed changes were brought forward by industry representatives requesting that MIOSHA make the changes.

**16. If amending an existing rule set, please provide the date of the last evaluation of the rule(s) and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rule(s) since the last evaluation:**

These rules are being amended.

- R 408.41405 Applicability, last amended in 2003
- R 408.41455 Definitions; A to H, last amended in 2003
- R 408.41461 Advance notice of tunnel excavation, last amended in 2014
- R 408.41471 Ground support; inspections; repairs, last amended in 2003

This is the first amendment of the rules that goes beyond OSHA regulations.

**17. Are there any changes or developments since implementation that demonstrate there is no continued need for the rule(s), or any portion of the rules?**

MIOSHA is not aware of any.

**18. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.**

No.

**19. Reviewed by the following Departmental Regulatory Affairs Officer (RAO):**

Liz Arasim  
Department of Licensing and Regulatory Affairs

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↓ To be completed by the ORR ↓

**Date RFR received:**

11-17-2017

☒ **Based on the information provided in this RFR, the ORR concludes that there are sufficient policy and legal bases for approving the RFR.**

<b>ORR assigned rule set number:</b>	2017-084 LR
<b>Date of approval:</b> 12/05/2017	Explanation: <i>This Request for Rulemaking satisfies the requirements of the Administrative Procedures Act, 1969 PA 306, MCL 24.201 et seq., and Executive Order 2011-5.</i>

☐ **Based on the information provided in this RFR, the ORR is not approving the RFR at this time.**

<b>Date of disapproval:</b>	Explanation:
<b>More information needed:</b>	Explanation: