

**Department of Labor & Economic Opportunity
Office of Employment and Training
Bureau of Services for Blind Persons
Administrative Services Division- Business Enterprise Program**

1. Rule(s) to be **processed** between July 1, 2020 and June 30, 2021. [Give brief description.]

Bureau of Services for Blind Persons – Vending Facility Program (ORR# not assigned)

(Authority: Conferred on the Director of the Department of Licensing and Regulatory Affairs by Sections 1, 5, and 16 of 1978 PA 260 and Executive Order Nos. 1996-2 and 2003-18, being MCL 393.351, 393.366, 445.2011.)

On June 28, 2012, the Governor issued an Executive Order (E. O.) 2012-10 abolishing the former Commission for the Blind and creating the Bureau of Services for Blind Persons, effective October 1, 2012. The E. O. modifies the Program's business model, necessitating a review and revision of the entire rule set. The Bureau of Services for Blind Persons has prepared a draft of new promulgated rules. BSBP presented the draft to the Elected Operators Committee (EOC) for review. The EOC provided feedback however due to the change in Bureau Director's other considerations the draft has not been finalized.

In 2019 the Governor issued Executive Order 2019-13 creating the Department of Labor and Economic Opportunity (DLEO) and transferring the Bureau of Services for Blind Persons by Type II transfer to DLEO effective August 11, 2019.

In keeping with the mandate of the Randolph-Sheppard Act, the Program continues to actively seek the participation of the Elected Operator's Committee to shape the Program's rules and policy.

MRS/Vocational Rehabilitation

New Rule: Competitive Bids - Competitive Bids is now established in MRS policies and is specific to Michigan rules associated for competitive bids.

Amended Rule 395.76 Rates of payment - to include Rate Determination for vendor services

Amend Rule 395.53 Purpose – Update purpose section to ensure alignment with Workforce Innovation and Opportunity Act (WIOA).

Amend Rule 395.54 General Requirements – Update requirements to ensure alignment with WIOA.

Proprietary Schools

Update to the Administrative Rules governing post-secondary proprietary schools/education corporations. Please see the attached for proposed changes. See attached doc

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2020 and June 30, 2021. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

BSBP/BEP: identified many rules that are obsolete and can be rescinded. The following rules, at a minimum, are obsolete and can be rescinded:

Annual Regulatory Plan 2020-2021

Proposed rescission of subrules (c), (d), (e), and (f) in R 393.9 on Candidate referral packet of the Vending Facility Program rules.

Proposed rescission of R 393.45 Vending facility training for existing cafeteria licensees.

Proposed rescission of sub rules (4) and (5) and Rule 393.46 Cafeteria training for licensees.

3. Has the agency failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

N/A

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

BSBP/BEP: R 393.10, R 393.11, R 393.12, R 393.13, R 393.14, R 393.15, and R 393.16 prescribe the process of becoming licensed in the Program. The Office of the Attorney General has expressed reservations about this process and recommends it be amended.

BSBP/BEP: R 393.54, R 393.55, and R 393.56 detail the grievance process for Program licensees. The current process is lengthy and inconsistent with similar processes in other state departments. These regulations could be reviewed to determine more efficient, effective and ultimately cost-effective methods for these processes.

- A. Whether there is a continued need for the rules.

BSBP/BEP: Federal regulations require the state licensing agency (i.e., the Bureau of Services for Blind Persons) to promulgate rules for the administration of the Randolph-Sheppard Program in Michigan. These regulations further require processes dealing with the issues present in the rules.

- B. A summary of any complaints or comments received from the public concerning the rules.

BSBP/BEP: The Elected Operators Committee has indicated the need for a review and revision of the entire rule set and looks forward to participating in the process.

- C. The complexity of complying with the rules.

BSBP/BEP: Compliance with current rules requires coordination with multiple stakeholders and can cause delays in providing services prescribed by these rules. Changes to the existing rule, based on the Program's current structure, are not complex, and in fact should reduce the Program's cost in responding to licensee grievances.

- D. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

BSBP/BEP: The rules do not conflict with or duplicate similar rules or regulations adopted by the federal government. The rules have no impact on local units of government.

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- E. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

BSBP/BEP: These rules were last amended in 2004. The EOC has forwarded its recommendation on the draft rules to the Bureau and the recommendations are being reviewed and incorporated into the rule set. When completed the proposed rules must be forwarded to RSA for their review before the State of Michigan can start its own promulgation process. Telemetry technology has been implemented in approximately 80% of state assets to assist in monitoring activities and 100% completion is expected within the next year. Among other things, telemetry allows offsite monitoring of vending sales, in addition to onsite visits.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

BSBP/BEP: https://www.michigan.gov/leo/0,5863,7-336-78421_28313_81736-18165--,00.html

Proprietary Schools: <https://www.michigan.gov/pss>

6. Please provide a list of the items identified for action in the 2020 ARP that have been completed and those that remain outstanding.

BSBP/BER: the drafting of rules by the Bureau must have a final review by the Bureau Director and the review of the rules by the EOC has been completed. The Bureau and EOC must agree on a final draft. Typically, this may include negotiations. In accordance with federal regulations, the recommendations must be reviewed and incorporated in the final draft to be sent to RSA for approval prior to commencing the state promulgation process.

MRS/Voc Rehab has the following remain outstanding:

R 395.51 Definitions (on hold)

R 395.53 Purpose – Update purpose to ensure alignment with WIOA.

R 395.54 General Requirements – Update requirements to ensure alignment with WIOA.

Proprietary Schools was transferred to the Department of Labor and Economic Opportunity (LEO) under Executive Order 2019-13 and the rules were part of the 2020 Annual Regulatory Plan for the Department of Licensing and Regulatory Affairs. LEO anticipates filing an RFR within the July 1, 2020 to June 30, 2021 timeline.

**Department of Labor & Economic Opportunity
Bureau of Employment Relations/Michigan Employment Relations Division**

1. Rule(s) to be **processed** between July 1, 2020 and June 30, 2021. [Give brief description.]

Amend the General Rules and Act 312 Rules to authorize the agency to enact policy to:

- a. Mandate electronic filing (e-filing) of all/ certain MERC cases and case documents;**
- b. Waive the filing requirement of hard copies on e-filed cases and documents;**
- c. Permit or require alternate methods on e-filed cases and documents;**
- d. Permit remote hearings to be held on MERC cases including court reporter participation;**
- e. Permit electronic recording and transcription of MERC case hearings;**
- f. Permit arbitrators to administer the oath or affirmation in Act 312 hearings;**
- g. Clarify the definition of “Advocate” used in Act 312 and Fact-finding processes;**
- h. Require 312 arbitrators to make certain preliminary rulings (e.g., duration) prior to setting the deadline date for submission of last offers in Act 312 proceedings**
- i. Other related changes.**

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2020 and June 30, 2021. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.

None to be rescinded.

3. Has the agency failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

(Items 1a-c) Without change, General Rule 181, 191, 192, 192a, 193, 195, 196, 198 minimize MERC’s ability to expedite the filing processes. Likewise, 14 others require extra filings that complicate or contravene the advantages of a party using any electronic filing method. Same for Rules 505 and 513 in Act 312.

(Items 1g & 1h) Changes are needed to avoid misinterpretation and erred application of certain key components in the Act 312 process.

- A.** Whether there is a continued need for the rules.

Yes

- B.** A summary of any complaints or comments received from the public concerning the rules.

Various complaints that include: Need for MERC to mandate e-filing of certain case types for faster more efficient processing and fewer redundant filings; Eliminate hard copy original and extras with e-filed materials; lack of clarity in some of the 312 definitions and steps; lack of use of more technology regarding remote hearings and alternative options for capturing the record at hearings.

C. The complexity of complying with the rules.

All relate to comments listed above in 4B.

D. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

None Known

E. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

May 2019, based on a new case management system (MERC e-File) that allows public access to view and e-file case materials.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

www.michigan.gov/merc

6. Please provide a list of the items identified for action in the 2020 ARP that have been completed and those that remain outstanding.

The following remain outstanding:

A. CHANGE GENERAL RULE 181 TO ALLOW AGENCY THROUGH MERC POLICY TO MANDATE THE E-FILING OF MERC CASES AND DOCUMENTS:

Rule 181. (1) "Filing" of a document, pleading, or other paper with the commission is considered complete on the date it is delivered to any office of the commission and received and accepted by the commission, administrative law judge, or other agent designated to receive the document, with the intent to enter it in the record. Filing may be accomplished by hand delivery, registered, certified or regular mail, private delivery service, or any other means specifically authorized **or required** by the commission or an administrative law judge designated by the commission.

(2) When LMA, PERA, or any of these rules require the filing of an original and extra copies of a document, filing is considered complete on the date a copy is filed, but the original and remaining copies shall be filed within 5 business days.

B. WAIVE THE REQUIREMENT OF FILING HARD COPIES (Original and extras) WHEN CASE IS INITIATED BY E-FILE OR OTHER DOCUMENTS ARE E-FILED (impacts 14 General Rules and 2 Act 312 Rules):

R 423.124 Strike elections “. . . A party shall file a signed original and 4 copies of the objections with the commission . . .”

R 423.132 Petitions; initiation by commission of fact finding “. . . The petitioner shall file an original and 3 copies with the commission . . .”

R 423.134 Answers “. . .The answer and 3 copies shall be filed with the commission . . .”

R 423.137 Fact finders' reports “. . . The fact finder shall file the fact finding report and 2 copies with the commission . . .”

R 423.141 Petitions for elections “. . . An original and 4 copies of the petition shall be filed with the commission . . .”

R 423.149b Objections to elections; rerun and runoff elections “. . . A signed original and 4 copies of the objections shall be filed with the commission, . . .”

R 423.151 Filing, contents, and service (ULP charge) “. . . An original and 4 copies of the charge shall be filed with the commission. . . .”

R 423.153 Amendments to charges “. . . An original and 4 copies of the amended charge shall be filed with the commission . . . If a request to amend a charge is made in writing, each party opposing the request shall file with the commission a signed original and 2 copies of its objection . . .”

R 423.155 Answers “. . . Each respondent may file with the commission a signed original and 4 copies of an answer to the complaint and attached charge, . . .”

R 423.156 Amendments to answers “. . . An original and 4 copies of the amended answer shall be filed with the commission . . .”

R 423.161 General provisions “. . . All pleadings to the administrative law judge shall include 1 original, and 1 copy, unless otherwise directed . . .”

R 423.173 Oral argument at hearing and briefs “. . . An original and 2 copies shall be submitted for any brief filed in a representation proceeding under part 4 of these rules, unless additional copies are requested. . . .”

R 423.176 Exceptions to administrative law judge's decision and recommended orders; cross exceptions and response; brief in support.

(2) An original and 4 copies of the exceptions and brief shall be filed with the commission, along with all of the following documents:

Two copies of each exhibit, if any, admitted, or offered and marked at hearing by either party.

Two copies of each party's post-hearing briefs.

Two copies of all of the following documents:

Any motion that resulted in a ruling by the administrative law judge dismissing or sustaining the unfair labor practice in whole or part.

Any brief in support of the motion.

The response to the motion filed by the opposing party or parties.

* *

(8) Within 10 days after service of exceptions, a party may file 1 original and 4 copies of cross exceptions and briefs in support thereof, or 1 original and 4 copies of a brief or legal memorandum in support of the decision and recommended order.

(9) Within 10 days after service of cross exceptions, an opposing party may file 1 original and 4 copies of a brief or legal memorandum

R 423.177 Compliance and enforcement.

(1)(b) An original and 4 copies of the request shall be filed with the commission, . . .”

(4) Each respondent alleged in the request to have compliance obligations shall, within 10 days of service of the request, file an original and 4 copies of an answer with the commission, . . .”

R 423.191 Notice to commission; filing; service.

Rule 191. (4) Upon filing a written notice and affidavit with the commission, . . . An original and 4 copies of the notice and affidavit shall be filed with the commission, unless the notice and affidavit are filed electronically pursuant to commission policy.

* *

(7) The bargaining representative shall file an answer and any affirmative defenses with the commission within 7 days of service of notice of hearing and shall simultaneously serve the initiating party. An original and 4 copies of any answer and affirmative defenses shall be filed with the commission, unless the answer and affirmative defenses are filed electronically pursuant to commission policy.

R 423.192 Hearing on whether a strike occurred.

(13) At the discretion of the commission, parties may submit briefs at the close of the hearing. A party submitting a brief shall file the original and 4 copies with the commission, unless the brief is submitted electronically pursuant to commission policy.

R 423.192a Notice of names of employees presumed to have engaged in a strike.

(3) The public school employer or the superintendent of public instruction shall file with the commission an original and 2 copies of the notice and affidavit, unless the notice and affidavit are filed electronically pursuant to commission policy.

R 423.193. Challenge to presumption of participation in a strike.

(3) The public school employee shall file an original and 2 copies of the answer and affidavit with the commission, unless the answer and affidavit are filed electronically pursuant to commission policy.

R 423.195 Exceptions to decision and recommended order; cross exceptions and response; brief in support.

(2) An original and 4 copies of the exceptions and brief shall be filed with the commission, along with all of the following documents:

Two copies of the notice and affidavit identifying the employees presumed to have been engaged in a strike in violation of section 2 of PERA.

Two copies of the answer and affidavit of the employee presumed to have been engaged in a strike in violation of section 2 of PERA.

Two copies of each exhibit, if any, admitted, or offered and marked at hearing by either party.

Two copies of each party's briefs.

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(3) . . . If the exceptions and the supporting documents listed in subrule (2) of this rule are filed electronically pursuant to commission policy, it is not necessary to file additional copies.

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(8) Within 10 days after service of exceptions, an opposing party may file 1 original and 4 copies of cross exceptions and briefs in support of the cross exceptions, or 1 original and 4 copies of a brief or legal memorandum in support of the decision and recommended order. If the cross exceptions and brief in support or the legal memorandum in support of the decision

and recommended order are filed electronically pursuant to commission policy, it is not necessary to file additional copies.

(9) Within 10 days after service of cross exceptions, an opposing party may file 1 original and 4 copies of a brief or legal memorandum responding specifically to the issues raised in the cross exceptions that were not addressed in the exceptions. If the brief or legal memorandum responding to the cross exceptions is filed electronically pursuant to commission policy, it is not necessary to file additional copies.

R 423.196 Notice of conditions constituting a lockout.

(3) An original and 4 copies of the notice and affidavit shall be filed with the commission, unless the notice and affidavit are filed electronically pursuant to commission policy.

R 423.198 Hearing on whether a lockout occurred.

(12) At the discretion of the commission, parties may submit briefs at the close of the hearing. Any party submitting a brief shall file the original and 4 copies with the commission and serve a copy on each of the other parties no later than the close of business on the last day of the hearing. If the brief is filed electronically pursuant to commission policy, it is not necessary to file additional copies.

Act 312 Rules impacted by waiving the requirement of an original and extra hard copies on e-filed cases:

R 423.505 Petition to initiate compulsory arbitration. “. . . 3 copies, along with a proof of service, shall be filed with the commission . . .”

R 423.513 Panel findings, opinion, and award. “. . . (4) The arbitrator shall serve a copy of the award on each party and send the original and 2 copies of the award, along with an electronic copy of the award, to the commission with the entire record.

C. ALLOW OPTION OF ELECTRONIC RECORDING AND TRANSCRIPTION OF HEARINGS:

R 423.136 (8) No official record will be made unless the parties request one, in which case, the cost of a court reporter and any other costs associated with the preparation of the record shall fully be the responsibility of the parties pursuant to R423.138.

R 423.138 (3) A party may order a transcript of a deposition at its own expense. The party who requests a deposition shall pay the costs for the court reporter and for a copy of the transcript of the deposition for the fact finding hearing record.

R 423.171 (8) The record of any hearing or proceeding shall be taken pursuant to all of the following:

- (a) Certification. Only official court reporters certified in accordance with the state court administrative office (SCAO) may record or prepare transcripts of proceedings held by or on behalf of the commission pursuant to these rules. Official court reporters shall, at a minimum, be designated as a certified shorthand reporter (CSR), certified steno mask reporter (CSMR), or certified electronic recorder (CER) as defined by SCAO. The signature line on the certification shall be signed by the court reporter who physically appeared at the proceedings and shall contain a current certification number issued by the SCAO as assigned to that reporter.

- (b) Attendance at hearing. A court reporter satisfying the certification requirements specified in subrule (8)(a) of this rule shall attend all hearings conducted by or on behalf of the commission and take a verbatim record of the proceedings, including, but not limited to, opening statements, witness testimony, final arguments, and the reasons given by the administrative law judge for granting or refusing any motion made by a party during the course of hearing.
- (c) Furnishing transcript. The court reporter shall furnish within 10 business days, in verbatim record, a transcript of the proceedings or any part of the proceedings taken by him or her to any party on request. A party ordering the transcript shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript.
- (d) Filing transcript. The court reporter shall file with the commission and the administrative law judge an original transcript of the record, in legible English, of any proceedings conducted by or on behalf of the commission. The transcript shall include a certification by the court reporter that the transcript is an original, verbatim transcript of the proceedings. The original transcript shall become part of the record in the case, and the commission shall maintain a copy of the transcript for the time period required under R 423.185.

R 423.192 (12) The court reporter shall prepare the transcript within 1 business day of each day's proceedings and provide it to the commission. A court reporter shall file with the commission an original transcript of the record, in legible English, of any proceedings conducted by or on behalf of the commission. The transcript shall include a certification by the court reporter that the transcript is an original, verbatim transcript of the proceedings. The original transcript shall maintain a copy of the transcript for the time period required under R 423.185. A party that orders a copy of the transcript shall make arrangements with the court reporter for payment of the cost of the copy.

R 423.194 (11) The court reporter shall prepare the transcript within 1 business day of each day's proceedings and provide it to the commission. A court reporter shall file with the commission an original transcript of the record, in legible English, of any proceedings conducted by or on behalf of the commission. The transcript shall include a certification by the court reporter that the transcript is an original, verbatim transcript of the proceedings. The original transcript shall maintain a copy of the transcript for the time period required under R 423.185. A party that orders a copy of the transcript shall make arrangements with the court reporter for payment of the cost of the copy.

R 423.198 (11) The transcript shall be prepared within 1 business day of each day's proceedings and provide it to the commission. The court reporter shall file with the commission an original transcript of the record, in legible English, of any proceedings conducted by or on behalf of the commission. The transcript shall include a certification by the court reporter that the transcript is an original, verbatim transcript of the proceedings. The original transcript shall become part of the record in the case, and the commission shall maintain a copy of the transcript for the time period required under R 423.185. A party that orders a copy of the transcript shall make arrangements with the court reporter for payment of the cost of the copy.

Act 312 Rules impacted by the court reporter requirement:

R 423.507 (10) Testimony shall be taken by a court reporter. . . .

C. CREATE A NEW RULE THAT ALLOWS COMMISSION THROUGH POLICY TO PERMIT OR REQUIRE ALTERNATE SERVICE METHODS (SYSTEM OR ELECTRONIC SERVICE) ON E-FILED CASES AND DOCUMENTS.

D. PERMIT THE IMPARTIAL ARBITRATOR TO ADMINISTER THE OATH OR AFFIRMATION IN ACT 312 HEARING:

R 423.508 Witness examination. A witness at the hearing shall be examined orally under oath or affirmation administered by the court reporter.

E. CLARIFY DEFINITION OF “ADVOCATE” IN ACT 312 RULES:

R 423.501 (b) “Advocate” means an individual who has represented management or a union in collective bargaining or labor relations in the 5 years prior to his or her selection by the commission as a nominee for an impartial arbitrator or chair of an arbitration hearing panel pursuant to Section 5(1) of 1969 PA 312, MCL 423.235(1). Advocate also means an individual, including an attorney, who is associated with a firm or entity that has represented management or a union in collective bargaining or a labor relations in the 5 years prior to his or her selection by the commission as a nominee for an impartial arbitrator or chair of an arbitration hearing panel pursuant to Section 5(1) of 1969 PA 312, MCL 423.235(1).

F. REINFORCE THE REQUIREMENT THAT THE IMPARTIAL ARBITRATOR IN AN ACT 312 PREHEARING MUST RULE ON ‘DURATION’ BEFORE THE LAST OFFERS OF SETTLEMENT ARE SUBMITTED BY THE PARTIES:

R 423.507 (3) The arbitrator shall do all of the following:

Make a determination on the economic issues in dispute and the duration of the collective bargaining agreement, and require each party to exchange and submit all of the following:

**Department of Labor & Economic Opportunity
MIOSHA/Technical Service Division**

1. Rule(s) to be **processed** between July 1, 2020 and June 30, 2021. [Give brief description.]

MOAHR # Not Assigned Construction Safety and Health Standard – Part 1 – General Rules Authority: sections 19 and 21 of 1974 PA 154, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MOAHR # Not Assigned Construction Safety and Health Standard – Part 6 – Personal Protective Equipment – Authority: sections 19 and 21, of 1974 PA 154, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 8 – Handling and Storage of Materials – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 12 – Scaffolds and Scaffold Platforms – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 13 – Mobile Equipment – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 14 – Tunnels, Shafts, Cofferdams and Caissons – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These

rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 18 – Fire Prevention – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 21 – Guarding of Walking and Working Areas – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rules are being amended in order to make editorial and administrative revisions.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 22 – Signals, Signs, Tags and Barricades – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rules are being amended in order to make editorial and administrative revisions. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 602 – Asbestos Standards for Construction – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 603 – Lead Exposure in Construction – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 604 – Chromium (VI) in Construction – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These

rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 605 – Methylenedianiline (MDA) in Construction – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Construction Safety and Health Standard – Part 609 – Cadmium in Construction – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in the construction industry. These rule sets are being amended in order to make editorial and administrative revisions and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 49 – Slings – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in general industry operations. These rules are being amended in order to make editorial and administrative revisions.

MIOSHA # 2019-122 General Industry Safety and Health Standard – Part 62 – Plastic Molding – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in plastic molding operations. These rules are being amended after approval of an advisory committee that was convened at the request of industry.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 74 – Fire Fighting – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The current rules will be revised to reflect Michigan Bureau of Fire Services rule to adopt by reference the National Fire Protection Association 1403 standard during live fire training in Michigan and rescind nonmandatory appendices. As a result of potential legislative change MIOSHA may be required to write new rules regarding fire fighters’ use of PFAS containing foam in fire fighting operations.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 302 – Vinyl Chloride – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Vinyl Chloride in general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 303 – Methylenedianiline (MDA) in General Industry – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with MDA in general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 304 – Ethylene Oxide – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Ethylene Oxide in either construction or general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 306 – Formaldehyde – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Formaldehyde in either construction or general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 307 – Acrylonitrile – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Acrylonitrile in either the construction or general industry safety and health operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 308 – Inorganic Arsenic – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Arsenic in either construction or general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 309 – Cadmium in General Industry – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Cadmium in general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 310 – Lead in General Industry – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Lead in general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 312 1, 3 – Butadiene – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with 1,3-Butadiene in either construction or general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 313 – Methylene Chloride – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Methylene Chloride in either construction or general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry and Construction Safety and Health Standard – Part 314 – Coke Oven Emissions – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working around Coke Oven Emissions in either construction or general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 472 – Medical Services and First Aid – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in general industry operations. These rules are being amended in order to make editorial and administrative revisions. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 554 – Bloodborne Infectious Diseases - Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working in general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations.

MIOSHA # Not Assigned General Industry Safety and Health Standard – Part 590 – Silica in General Industry – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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. The topic-based rule sets are meant to provide clarity/consistency to those working with Silica in general industry operations. These rules are being amended in order to be as effective as federal OSHA regulations and required under the standard improvement project issued by Federal OSHA.

MIOSHA # Not Assigned Administrative Safety and Health Standard – Part 4 - Procedures - Authority: section 46 of 1974 PA 154, and section 33 of 1969 PA 306, MCL 408.1046 and 24.233 of the Michigan Compiled Laws, 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. These rules are being amended in order to make editorial and administrative revisions.

MIOSHA # Not Assigned Administrative Safety and Health Standard – Part 13 – Inspections and Investigations, Citations, and Proposed Penalties - Authority: By authority conferred on the department of labor and economic opportunity by section 69 of 1974 PA 154, 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. These rules are being amended in order to make editorial and administrative revisions.

MOAHR # Not assigned. Ionizing Radiation Rules Governing the Use of Radiation Machines Authority: Section 13521, 1978 PA 368, MCL 333.13521 and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, and 2011-4, being MCL 330.3101, 445.2001, 445.2011, 445.2025, and 445.2030. The department of labor and economic opportunity is authorized to promulgate rules pertaining to the use of machines producing ionizing radiation. These rules will be revised as follows:

Rules to be amended:

R 333.5311 – R 333.5355 Medical X-ray Installations. These rules cover the use of x-radiation for medical use on humans. Changes in technology necessitate a revision of many of these rules.

R 333.5281 – R 333.5309 Industrial Radiographic Operations and Installations. These rules cover the use of x-radiation to image objects, typically for quality assurance in industrial and manufacturing settings. Changes in technology necessitate a revision of many of these rules particularly cabinet radiography systems.

Proposed new rules:

R 333.5455 – R 333.5480 Therapeutic Radiation Machines. These rules would cover the use of radiation to treat cancer in human patients. The existing rules are non-specific and fail to account for technological advancements and new therapeutic modes.

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2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2020 and June 30, 2021. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

MOAHR # Not Assigned: Construction Safety and Health Part 6 – Personal Protective Equipment R 408.40624a in the Michigan Administrative Code. Obsolete

MOAHR # Not Assigned: Construction Safety and Health Part 12 – Scaffold and Scaffold Platforms - R 408.41221, R 408.41227, R 408.41236, R 408.41237, and R 408.41253 in the Michigan Administrative Code. Obsolete.

MOAHR # Not Assigned: Construction Safety and Health Part 603 – Lead in Construction. R 325.51984. R 325.51984 in the Michigan Administrative Code. Obsolete.

MOAHR # 2019-122: General Industry Safety and Health Part 62 – Plastic Molding - R 408.16223, R 408.16227, and R 408.16251 in the Michigan Administrative Code. Obsolete.

3. Has the agency failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

No

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

None

- A. Whether there is a continued need for the rules.

There is a continued need for the MIOSHA rules which set standards to help protect the safety and health of Michigan workers.

- B. A summary of any complaints or comments received from the public concerning the rules.

MIOSHA is not aware of any complaints from the public concerning the rules.

- C. The complexity of complying with the rules.

The Williams-Steiger Occupational Safety and Health Act of 1970 requires MIOSHA to promulgate standards that are at least as effective as those promulgated under the Act. Consequently, any complexity in complying with the MIOSHA rules stems from the complexing of the federal OSHA standards that are adopted by reference in the MIOSHA rules.

- D. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

The rules do not conflict with or duplicate federal regulations because they are adopted to be as effective as OSHA regulations.

- E. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The MIOSHA rules are continually revised and updated in order to be as effective as the federal regulations.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

MIOSHA Rules

https://www.michigan.gov/leo/0,5863,7-336-78421_11407_15368---,00.html

Radiation Safety Rules

https://www.michigan.gov/leo/0,5863,7-336-78421_11407_35791---,00.html

6. Please provide a list of the items identified for action in the 2020 ARP that have been completed and those that remain outstanding.

Completed:

MOAHR # 2019-116 Construction Safety and Health Standard – Part 39 – Hearing

Procedures By authority conferred on the director of the department of labor and economic opportunity by sections 19 and 21, of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1019 and 408.1021, 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.

Outstanding:

MOAHR # 2019-058 Construction Safety and Health Standard – Part 632 – Hazardous

Waste Operations and Emergency Response 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.

MOAHR # 2019-113 Construction Safety and Health Standard – Part 640 – Beryllium

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.

MIOSHA # 2019-122 General Industry Safety and Health Standard – Part 62 – Plastic

Molding – Authority: sections 19 and 21 of 1974 PA 154, MCL 408.1019, 408.1021, 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.

**Department of Labor & Economic Opportunity
Wage and Hour Division**

1. Rule(s) to be **processed between July 1, 2020 and June 30, 2021. [Give brief description.]**

R 408.9002(2)(a)(i), (b)(i), and (2)(c) of the Payment of Wages and Fringe Benefits rules need to be revised because these provisions conflict with R 408.701(b), (f) and (i) of the Wage and Hour Division General Rules, which took effect on May 6, 2019.
Proposed rule change 2019-133 LE and Proposed rule change 2019-127 LE are in process.

2. Rules that are obsolete or superseded and can be **rescinded between July 1, 2020 and June 30, 2021. Also, please identify the rules or rule sets that are least important to the mission and function of the agency or are otherwise strong candidates for rescission.**

The agency proposes rescinding the Wage Deviation Rules, R 408.771 through R408.787, because the wage deviation board has not been appointed as required under Section 5, MCL 408.935, of the Improved Workforce Opportunity Act (PA 337 of 2018). Also, the agency has not issued a wage deviation in more than 12 years. Finally, there is a comparable federal statute - Section 14(c) of the Fair Labor Standards Act, 29 CFR Part 525, that sets forth for a process whereby an employer may seek to receive a deviated wage rate for certain employees.

3. Has the agency failed to promulgate any statutorily required rules **or failed to utilize any statutorily required rules? Please explain.**

MCL 408.479(5) and MCL 408.482 of the Payment of Wages and Fringe Benefits Act (PA 390 of 1978) and MCL 408.934a(5) of the Improved Workforce Opportunity Wage Act (PA 337 of 2018) require the Director of LARA to promulgate rules to define the terms used in MCL 408.479(4) of PA 390 of 1978 and 408.934a(4) PA 337 of 2018. The rule sets for both Acts should be revised to ensure consistency of similar or identical terms defined in both Acts and with state and federal law.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

Members of the agricultural industry have voiced concern over R 408.711 regarding scale of piecework for harvesting fruits and vegetable in the Wage and Hour General Rules, and they have indicated that they would like the Division to set piecework rates for certain commodities.

The agency proposes rescinding the Wage Deviation Rules, R 408.771 through R408.787, because the wage deviation board has not been appointed as required under Section 5, MCL 408.935, of the Improved Workforce Opportunity Act (PA 337 of 2018). Also, the agency has not issued a wage deviation in more than 12 years. Finally, there is a comparable federal statute - Section 14(c) of the Fair Labor Standards Act, 29 CFR Part 525, that sets forth for a process whereby an employer may seek to receive a deviated wage rate for certain employees.

A. Whether there is a continued need for the rules.

The Wage and Hour Division General Rules and the Payment of Wages and Fringe Benefits rules are required by their respective governing statutes, PA 337 of 2018 and PA 390 of 1978.

B. A summary of any complaints or comments received from the public concerning the rules.

Consistency is needed between the two rulesets as well as with state and federal law.

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C. The complexity of complying with the rules.

Because the rule sets have not been updated to reflect changes in state and federal law and guidance, they potentially create situations that may result in noncompliance by an employer. Specifically, the definitions in both rule sets must be updated to ensure that the definitions contained in both rule sets are not in conflict.

D. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

R 408.9002(2)(a), (b), and (c) conflicts with the recently updated R 408.701(b), (f) and (i) of the Wage and Hour Division General Rules. The latter rules provide that to be exempt from overtime, in general, an employee must meet certain tests regarding his or her job duties and currently be paid on a salary basis at not less than the current federal standard salary level per week for overtime exempt employees.

E. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The Payment of Wage and Fringe Benefits Rules were last updated in 2014. The Wage and Hour Division General Rules that were promulgated under Public Act 138 of 2014 were amended in August 2016. With the enactment of Public Act 337 of 2018, which repealed Public Act 138, the Wage and Hour Division General Rules were amended in April 2019 in order to comply with Public Act 337. The rules were reviewed in 2019 and proposed rules 2019-133 LE and 2019-127 LE were filed with DLARA MOAHR are in process.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

https://dtmb.state.mi.us/ARS_Public/AdminCode/AdminCode

6. Please provide a list of the items identified for action in the 2020 ARP that have been completed and those that remain outstanding.

Proposed rule change 2019-133 LE is still pending the development of the draft rule and accompanying Regulatory Impact Statement.
Proposed rule change 2019-127 LE is still pending the development of the draft rule and accompanying Regulatory Impact Statement.

Department of Labor & Economic Opportunity
Workers' Disability Compensation Agency

1. Rule(s) to be **processed** between July 1, 2020 and June 30, 2021. [Give brief description.]

Workers' Disability Compensation Health Care Services Rules: 2020-26-LE (Authority conferred on the Workers' Disability Compensation Agency by Sections 205 and 315 of 1969 PA 317, Section 33 of 1969 PA 306, Executive Reorganization Order Nos. 1982-2, 1986-3, 1990-1, 1996-2, 2003-1, 2011-4, and 2019-13, MCL 418.205, 418.315, 24.233, 18.24, 418.1, 418.2, 445.2001, 445.2011, and 445.2030.) The Health Care Services rule set is reviewed and revised annually due to ongoing changes in the medical arena, as well as with Medicare. This rule set establishes schedules of maximum fees for a health facility or health care provider for treatment or attendance, service, device, apparatus, or medicine, as well as procedures by which a health care provider shall be paid, and source documents to be utilized.

Workers' Disability Compensation Agency General Rules: [ORR # Not Assigned] (Authority conferred on the director of the Workers' Disability Compensation Agency by section 205 of 1969 PA 317, MCL 418.205; and Executive Reorganization Order Nos. 1996-2, 1999-3, 2002-1, and 2003-1, 2003-18, 2019-13, MCL 445.2001, 418.3, 445.2004, and 445.2011). The rules will be revised to make necessary updates in order to facilitate the acceptance of electronic claims, insurance filings, and other reporting data, including use of electronic signatures. Rules regulating attorney fees will be updated to reflect statutory changes in rate calculation and in response to case law. In addition, new rules will be added to this rule set to establish procedures for submitting and processing requests for review of redemption orders; provide procedures to implement requests under MCL 418.161(n); address issues raised by case law regarding overpayment reimbursement; require increased use of forms advising injured workers of rights and procedures. Rules regarding vocational rehabilitation will be updated to facilitate/provide for job search as required by statutory amendments and caselaw. Overall, language will be updated regarding the service of papers, vocational rehabilitation services, as well as general technical updates throughout.

Workers' Disability Compensation Appeals Commission General Rules [ORR # Not Assigned]: The rules apply to the practice and procedures before the Workers' Disability Compensation Appeals Commission under the workers' disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. This RFR specifically references Part 13, Subpart B (R 792.11314 – R 792.11321) of the Michigan Administrative Hearing System, Administrative Hearing Rules, currently located within Licensing and Regulatory Affairs - Michigan Office Of Administrative Hearings and Rules. As a result of Executive Order 2019-13, Part 13, Subpart B will be rescinded by MOAHR, and promulgated by LEO, Workers' Disability Compensation Agency. Some of the specific rules in Part 13, Subpart B will be updated to reflect changes in process and procedure.

Workers' Disability Compensation Board of Magistrates General Rules [ORR # Not Assigned]: The rules apply to the practice and procedures before the workers' disability compensation board of magistrates under the workers' disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. This RFR specifically references Part 13 (R 792.11301 – R 792.11313) of the Michigan Administrative Hearing System, Administrative

Hearing Rules, currently located within Licensing and Regulatory Affairs - Michigan Office Of Administrative Hearings and Rules. As a result of Executive Order 2019-13, Part 13 will be rescinded by MOAHR, and promulgated by LEO, Workers' Disability Compensation Agency. Some of the specific rules in Part 13 will be updated to reflect changes in process and procedure including simplification of pre-trial hearing process and case scheduling; rules to facilitate expansion in the use of electronic conferencing for case resolution, settlement approval and adjudication.

2. Rules that are obsolete or superseded and can be **rescinded** between July 1, 2020 and June 30, 2021. Also, please identify the rules or rule sets that are least important to the mission and function of the agency, or are otherwise strong candidates for rescission.

N/A

3. Has the agency failed to promulgate any statutorily required rules **or** failed to utilize any statutorily required rules? Please explain.

NO.

4. Please indicate the rules that are most problematic to industry and could be reviewed to determine the most business-friendly method of regulation.

The Workers' Disability Compensation Agency Health Care Services rule set is reviewed and revised annually due to ongoing changes in the medical arena, as well as with Medicare. The industry would like continual improvement with efficiency of processing new rules that allows us to keep pace with the rapidly changing medical arena. The Agency has not found a more efficient or cost-effective means of administering a reimbursement fee schedule in an equitable fashion across all parties.

The Workers' Disability Compensation Agency General Rules have not been updated in their entirety in many years. While not necessarily problematic to industry, the rules do regulate the administration of all major workers' disability compensation processes and procedures, which does impact all involved parties, including businesses large and small across the state.

- A. Whether there is a continued need for the rules.

There is a continued need for the Workers' Disability Compensation Health Care Services rule set. This rule set establishes schedules of maximum fees by a health facility or health care provider for such treatment or attendance, service, device, apparatus, or medicine, as well as procedures by which a health care provider shall be paid.

With respect to the Workers' Disability Compensation Agency General Rules, there is continued need to provide standardized oversight of workers' compensation procedures to maintain consistency for all parties. For example, the Agency receives continual requests from the public to allow for the electronic submission of forms. Electronic submission of data including Agency forms will be addressed in the updated rules, and will enable the Agency to adapt to an industry that is rapidly changing and transitioning to "paperless" filing. There is an immediate need for the Agency to

provide a safe and secure electronic data portal for the Agency’s customers in order to enhance the speed and efficiency of our processes.

Both the Workers’ Disability Compensation Board of Magistrates General Rules and the Workers’ Disability Compensation Appeals Commission General Rules, in much the same way as the Agency general rules, provide the needed standardized guidelines for all parties engaged in the hearings process within the workers’ compensation system.

B. A summary of any complaints or comments received from the public concerning the rules.

N/A

C. The complexity of complying with the rules.

Of the rules being updated, the most complex in terms of compliance would be the Health Care Rules. As noted above in Question #4, the Agency’s Health Care Rules are tied directly to the Medicare fee schedules which are updated several times throughout a year. The rules are also directly tied to Current Procedural Terminology (CPT) codes, which are published in March of each year. The Agency’s rule set is revised annually based on data from the previous year. It is sometimes difficult for the Agency’s customers to understand that compliance is tied to the previous year’s codes, simply because the rules promulgation process must go through the full rulemaking process.

D. Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

The rules do not conflict with or duplicate other governmental rules, either local or federal.

E. The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

The last revisions to the Workers’ Disability Compensation Health Care Services rule set (2018-017 LR) took effect January 8, 2019. These rules are directly linked to annual updates by Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA). As such, the rules should be updated annually to account for the latest information.

The last revisions to the Workers’ Disability Compensation Agency General Rules took place with ruleset number 2015-028 LR, which became effective Oct. 21, 2015. Technology is driving several updates to future rulesets as noted above, mainly inclusive of electronic submission of forms and other correspondence related to claims activity.

Both the Workers’ Disability Compensation Board of Magistrates General Rules and the Workers’ Disability Compensation Appeals Commission General Rules were transferred to the Michigan Administrative Hearings System in 2015, which was the last evaluation until the transfer back to the Agency due to Executive Order 2019-13.

5. Please provide the URL link the department or bureau is currently using to display their administrative rules.

https://dtmb.state.mi.us/ARS_Public/AdminCode/AdminCode

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6. Please provide a list of the items identified for action in the 2020 ARP that have been completed and those that remain outstanding.

Workers' Compensation Health Care Services Rules and Workers' Compensation Agency General Rules changes and updates were highlighted in the 2019 Annual Regulatory Plan and remain outstanding.