

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Labor and Economic Opportunity

2. Bureau:

MIOSHA

3. Promulgation type:

MCL 24.244 (2)

4. Title of proposed rule set:

Construction Safety and Health Standard Part 9, Excavation, Trenching, and Shoring

5. Rule numbers or rule set range of numbers:

R 408.40901 to R 408.40953

6. Estimated time frame:

3 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

CS Part 9, Excavation, Trenching, and Shoring, gives directions to employers on protecting Michigan employees from safety hazards in the workplace.

These rules are being amended to add the word “vertically” to R 408.40945, “Trenching Boxes and Shields,” to match the federal Occupational Safety and Health Administration rules (OSHA). These rules are also being amended to add definitions that are listed in OSHA’s Subpart P – Excavation standard, 29 CFR 1926.650, “Scope, application, and definitions applicable to this subpart,” 1926.651, “Specific excavation requirements,” and 1926.652, “Requirements for protective systems.”

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

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

The director of the department has the specific promulgation authority for the rules.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 408.1019 and 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.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Michigan Occupational Safety and Health Act No. 154 of 1974, as amended, being MCL 408.1021.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

None. The Williams-Steiger Occupational Safety and Health Act of 1970 requires that the Michigan Occupational Safety and Health Administration promulgate standards that are “at least as effective as” those promulgated under Section 6 of the Act. By authority conferred on the director of the department of labor and economic opportunity by sections 19 and 21 of Act No. 154 of 1974, as amended, being MCL 408.1019 and 408.1021.

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

None that MIOSHA is aware of.

11. Are the rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

MCL 24.244 (2)

A. Explain why the rules are being promulgated under 24.244.

These rules are being amended in order to be at least as effective as federal OSHA.

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.