

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:

Full Process

4. Title of proposed rule set:

Part 4. Procedures Board of Appeal

5. Rule numbers or rule set range of numbers:

R 408.21401 - R 408.21447

6. Estimated time frame:

12 months

Name of person filling out RFR:

Daniela Pelachyk

E-mail of person filling out RFR:

PelachykD@michigan.gov

Phone number of person filling out RFR:

517-284-7738

Address of person filling out RFR:

530 West Allegan Street, Lansing MI, 48933

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

MIOSHA Safety and Health Standard Part 4, Procedures. The Board of Health and Safety Compliance and Appeals procedures gives direction to employers and employees on governing proceedings in contested cases before the board. MIOSHA is updating the rules to include the following:

Correction "board or a hearing office" to "board."

Rescinding unnecessary rules.

Adding language to allow filing and service of documents by email and facsimile.

Adding language to establish procedures for the issuance and service of subpoenas by the board.

Adding language and modifying timelines for filing exceptions and responses.

MIOSHA is updating the rules to remove duplicate provisions now contained in the uniform hearing rules R 792.10101 to R 792.11903.

MIOSHA is also updating the rules to make them consistent with existing practices as authorized by the board.

In addition, minor editorial and formatting changes are being made throughout the rule set.

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 408.1046(5) and Executive Reorganization Orders Nos. 1996-2, 2003-1, 2008-4, 2011-4, 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 of 1974 PA 154 MCL 408.1046(5).

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 MIOSHA promulgate standards that are “at least as effective as” those promulgated under Section 6 of the Act. By the authority conferred on the board of health and safety compliance and appeals by section 46 of the of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL 408.1046.

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

The general subject matter of the appeals process is discussed in MIOSHA’s field operation manual. Agency instruction MIOSHA-COM-4-2R4, Appeal and Settlement Processes for MIOSHA Enforcement Divisions, also addresses this subject.

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

No, the rules are not listed on the department's annual regulatory plan as rules to be processed for the current year.

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?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rule does not exceed similar regulations, compliance requirements, or other standards adopted at the state or regional level but is more stringent than on the federal level due to the federal process having less definitive timelines imposed.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The rules do not incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5. The rules do incorporate recommendations received from party representatives in board proceedings regarding complaints pertaining to the current rule set’s limitations on filing and service of documents and the filing of exceptions.

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

Last evaluation of the rule set was July 14, 2023, regarding the filing and service rule specifically. Prior to that, the entire rule set was evaluated and amendments were drafted on June 6, 2000.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

Portions of the rules are being rescinded because the subject matter is covered by MOAHR’s rules, as stated in the response in question 7.

17. 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

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.