

# Michigan Register

Issue No. 15– 2016 (Published September 1, 2016)



# GRAPHIC IMAGES IN THE MICHIGAN REGISTER

## COVER DRAWING

### *Michigan State Capitol:*

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

## PAGE GRAPHICS

### *Capitol Dome:*

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19<sup>th</sup> century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

### *East Elevation of the Michigan State Capitol:*

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

# Michigan Register

Published pursuant to § 24.208 of  
The Michigan Compiled Laws



Issue No. 15— 2016

(This issue, published September 1, 2016, contains  
documents filed from August 1, 2016 to August 15, 2016)

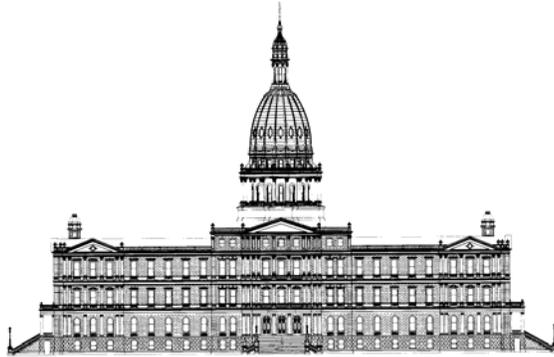
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**Jeff Bankowski**, Executive Director, Office of Performance and Transformation; **Deidre O’Berry**, Administrative Rules Specialist for Operations and Publications.

**Rick Snyder, Governor**



**Brian Calley, Lieutenant Governor**

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## PREFACE

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### PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The Office of Regulatory Reform publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

**24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.**

Sec. 8.

(1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

- (a) Executive orders and executive reorganization orders.
- (b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
- (c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
- (d) Proposed administrative rules.
- (e) Notices of public hearings on proposed administrative rules.
- (f) Administrative rules filed with the secretary of state.
- (g) Emergency rules filed with the secretary of state.
- (h) Notice of proposed and adopted agency guidelines.
- (i) Other official information considered necessary or appropriate by the office of regulatory reform.
- (j) Attorney general opinions.
- (k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

**4.1203 Michigan register fund; creation; administration; expenditures; disposition of money received from sale of Michigan register and amounts paid by state agencies; use of fund; price of Michigan register; availability of text on internet; copyright or other proprietary interest; fee prohibited; definition.**

Sec. 203.

(1) The Michigan register fund is created in the state treasury and shall be administered by the office of regulatory reform. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs of preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of the Michigan register at a price determined by the office of regulatory reform not to exceed the cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the office of regulatory reform shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the office of regulatory reform shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the office of regulatory reform shall be made available in the shortest feasible time after it is made available to the office of regulatory reform.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The office of regulatory reform shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

**CITATION TO THE MICHIGAN REGISTER**

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

**CLOSING DATES AND PUBLICATION SCHEDULE**

The deadlines for submitting documents to the Office of Regulatory Reinvention for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The Office of Regulatory Reinvention is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, Office of Regulatory Reinvention, Ottawa Building – Second Floor, 611 W. Ottawa Street, Lansing, MI 48909.

### **RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE**

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

### **SUBSCRIPTIONS AND DISTRIBUTION**

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of \$400.00 per year. Submit subscription requests to: Office of Regulatory Reinvention, Romney Building –Eight Floor, 111 S. Capitol Avenue, Lansing, MI 48909. Checks Payable: State of Michigan. Any questions should be directed to the Office of Regulatory Reinvention (517) 335-8658.

### **INTERNET ACCESS**

The *Michigan Register* can be viewed free of charge on the Internet web site of the Office of Regulatory Reinvention: [www.michigan.gov/orr](http://www.michigan.gov/orr).

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the Office of Regulatory Reinvention Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Jeff Bankowski, Executive Director,  
Office of Performance and Transformation

## 2016 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2016	February 1, 2016
2	February 1, 2016	February 15, 2016
3	February 15, 2016	March 1, 2016
4	March 1, 2016	March 15, 2016
5	March 15, 2016	April 1, 2016
6	April 1, 2016	April 15, 2016
7	April 15, 2016	May 1, 2016
8	May 1, 2016	May 15, 2016
9	May 15, 2016	June 1, 2016
10	June 1, 2016	June 15, 2016
11	June 15, 2016	July 1, 2016
12	July 1, 2016	July 15, 2016
13	July 15, 2016	August 1, 2016
14	August 1, 2016	August 15, 2016
15	August 15, 2016	September 1, 2016
16	September 1, 2016	September 15, 2016
17	September 15, 2016	October 1, 2016
18	October 1, 2016	October 15, 2016
19	October 15, 2016	November 1, 2016
20	November 1, 2016	November 15, 2016
21	November 15, 2016	December 1, 2016
22	December 1, 2016	December 15, 2016
23	December 15, 2016	January 1, 2017
24	January 1, 2017	January 15, 2017

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**PROPOSED ADMINISTRATIVE RULES,  
NOTICES OF PUBLIC HEARINGS**

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*MCL 24.242(3) states in part:*

*“... the agency shall submit a copy of the notice of public hearing to the Office of Regulatory Reform for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the Office of Regulatory Reform.”*

*MCL 24.208 states in part:*

*“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

*\* \* \**

*(d) Proposed administrative rules.*

*(e) Notices of public hearings on proposed administrative rules.”*

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**PROPOSED ADMINISTRATIVE RULES**

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS ~~CONSUMER AND INDUSTRY~~  
SERVICES BUREAU OF

CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU ~~AND LAND~~  
DEVELOPMENT

~~MOBILE HOME AND LAND RESOURCES DIVISION~~

SECURITIES

Proposed May 23, 2016

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the ~~corporation and securities bureau~~ **director of the department of licensing and regulatory affairs** by section 412 of **1964 PA 265** ~~Act No. 265 of the Public Acts of 1964, as amended, being MCL 451.812 of the Michigan Compiled Laws~~ and by sections **201, 202, 202a, 203, 304, 306, 401, 403, 405, 406, 410, 411, 412, 502, 504, and 605** of **2008 PA 551**, **MCL 451.2201, 451.2202, 451.202a, 451.2203, 451.2304, 451.2306, 451.2401, 451.2403, 451.2405, 451.2406, 451.2410, 451.2411, 451.2412, 451.2502, 451.2504, and 451.2605**, and Executive Reorganization Order No. 2012-6, MCL 445.2034)

R 451.602.1, R 451.602.2, R 451.602.3, R 451.602.4, R 451.602.6, R 451.602.7, R 451.602.8, R 451.603.1, R 451.603.2, R 451.603.5, R 451.604.1, R 451.604.2, R 451.604.3, R 451.704.1, R 451.704.2, R 451.705.4, R 451.705.6, R 451.706.1, R 451.706.2, R 451.706.4, R 451.706.8, R 451.706.24, R 451.706.26, R 451.801.3, R 451.801.4, R 451.802.2, R 451.803.3, R 451.803.5, R 451.803.8, R 451.803.10, and R 451.803.11 are being rescinded, and R 451.1.1, R 451.2.1, R 451.2.2, R 451.2.3, R 451.2.4, R 451.2.5, R 451.3.1, R 451.3.2, R 451.3.3, R 451.3.4, R 451.3.5, R 451.3.6, R 451.4.1, R 451.4.2, R 451.4.3, R 451.4.4, R 451.4.5, R 451.4.6, R 451.4.7, R 451.4.8, R 451.4.9, R 451.4.10, R 451.4.11, R 451.4.12, R 451.4.13, R 451.4.14, R 451.4.15, R 451.4.16, R 451.4.17, R 451.4.18, R 451.4.19, R 451.4.20, R 451.4.21, R 451.4.22, R 451.4.23, R 451.4.24, R 451.4.25, R 451.4.26, R 451.4.27, R 451.4.28, R 451.6.1, and R 451.6.2 of the Michigan Administrative Code are being added, as follows:

~~PART 2. REGISTRATION OF BROKER DEALERS, AGENTS AND INVESTMENT ADVISERS~~

R 451.602.1 ~~Application for broker-dealer registration.~~ **Rescinded.**

~~Rule 602.1. An application for broker-dealer registration shall contain the information specified in form BD. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted.~~

R 451.602.2 Application for agent registration; notice of agent registration. **Rescinded.**

~~–Rule 602.2. (1) An application for agent registration shall contain the information specified in U-4. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted. The fingerprint requirement in section 202(g) of the act is waived for an agent of a broker dealer that is either registered with the Securities and Exchange Commission or a member of the National Association of Securities Dealers.~~

~~–(2) A notice of agent termination shall contain the information specified in U-5. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted.~~

R 451.602.3 Application for investment adviser registration. **Rescinded.**

~~–Rule 602.3. An application for investment adviser registration shall contain the information specified in form MADV. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted.~~

R 451.602.4 Fees; payment; filing. **Rescinded.**

~~–Rule 602.4. (1) The annual fees required by section 202(b) of the act shall be paid during the month of December.~~

~~–(2) Filing and annual fees for all agents may be filed on an agent's behalf by a broker dealer or issuer with whom the agent is registered.~~

R 451.602.6 Broker dealer's net capital. **Rescinded.**

~~–Rule 602.6. (1) A securities broker dealer registered with the United States securities and exchange commission shall maintain net capital and ratio of aggregate indebtedness to net capital in accordance with rule 15c3-1, 17 C.F.R. §240.15c3-1 (1978) under the securities exchange act of 1934, 15 U.S.C. §78a et seq.~~

~~–(2) A securities broker dealer not registered with the United State securities and exchange commission shall have the net capital necessary to comply with the following conditions:~~

~~–(a) The aggregate indebtedness, as that term is defined in rule 15c3-1, 17 C.F.R. §240.15c3-1 (1978) under the securities and exchange act of 1934, 15 U.S.C. §78a et seq. hereinafter termed "indebtedness" of a broker dealer that has been registered with the administrator for at least 1 year shall not exceed 2,000% of its net capital, as that term is defined in rule 15c3-1 under the securities exchange act of 1934, hereinafter termed "net capital". The aggregate indebtedness of a broker dealer that has been registered with the administrator for less than 1 year shall not exceed 1,000% of its net capital.~~

~~–(b) Except as provided by subdivisions (c) and (d) of this subrule, a broker dealer shall have and maintain net capital of not less than \$10,000.00.~~

~~–(c) Notwithstanding the provisions of subdivision (b) of this subrule, a broker dealer shall have and maintain net capital of not less than \$5,000.00. If the broker dealer does not hold funds or securities for, or owe money or securities to, customers, and does not carry accounts of or for customers, except as provided for in paragraph (v) of this subdivision, and if the broker dealer conducts business in accordance with 1 or more of the following conditions, and does not engage in any other securities activities:~~

~~–(i) Introduces and forwards as a broker all transactions and accounts of customers to another broker or dealer who carries such accounts on a fully disclosed basis, and the introducing broker dealer~~

~~promptly forwards all of the funds and securities of customers received in connection with its activities as a broker-dealer.~~

~~–(ii) Participates in underwritings on a "best efforts" or "all or none" basis in accordance with the provisions of rule 15c2-4(b)(2), 17 C.F.R. §240.15c2-4(b)(2) (1978) under the securities exchange act of 1934, and promptly forwards to an independent escrow agent customers' checks, drafts, notes, or other evidences of indebtedness received in connection therewith which shall be made payable to the escrow agent.~~

~~–(iii) Promptly forwards subscriptions for securities to the issuer, underwriter, sponsor, or other distributor of such securities and receives checks, drafts, notes, or other evidences of indebtedness payable solely to the issuer, underwriter, sponsor, or other distributor who delivers the securities purchased directly to the subscriber.~~

~~–(iv) Effects an occasional transaction in securities for the broker-dealer's own investment account with or through another registered broker-dealer.~~

~~–(v) Acts as broker or dealer with respect to the purchase, sale, and redemption of redeemable shares of registered investment companies, and promptly transmits all funds and delivers all securities received in connection with such activities.~~

~~–(vi) Introduces and forwards all customer and all principal transactions with customers to another broker-dealer who carries such accounts on a fully disclosed basis, and promptly forwards all funds and securities received in connection with its activities as a broker-dealer, and does not otherwise hold securities or funds for, or owe money or securities to, customers, and does not otherwise carry proprietary accounts, except as provided in paragraph (iv) of this subdivision, or customer accounts, and~~

~~the broker-dealer's activities as dealer are limited to holding firm orders of customers and in connection therewith does either of the following:~~

~~–(A) In the case of a buy order, prior to executing the customer's orders, purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order, which shall be cleared through another broker or dealer.~~

~~–(B) In the case of a sell order, prior to executing the customer's order, sells as principal the same number of shares, or a portion thereof, which shall be cleared through another broker or dealer.~~

~~–(vii) Effects, but does not clear, transactions in securities as a broker on registered national securities exchange for the account of another member of that exchange.~~

~~–(d) Notwithstanding the provisions of subdivision (b) of this subrule, a broker-dealer shall have and maintain net capital of not less than \$2,500.00 if the broker-dealer engages in no other securities activities except those prescribed in this subdivision and meets all of the following conditions:~~

~~–(i) The broker-dealer's transactions are limited to both of the following:~~

~~–(A) The purchase, sale, and redemption of redeemable shares of registered investment companies, except that the broker-dealer may also effect an occasional transaction in other securities for its own investment account with or through another registered broker-dealer.~~

~~–(B) The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies.~~

~~–(ii) The broker-dealer promptly transmits all funds and delivers all securities received in connection with its activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.~~

~~–(3) A commodity issuer registered with the administrator and a broker-dealer registered with the administrator transacting business primarily in commodity contracts shall have the net capital and cash reserve necessary to comply with the following conditions:~~

~~-(a) The aggregate indebtedness to all other persons of a registrant who has been registered for at least 1 year shall not exceed 1,500% of its net capital. The aggregate indebtedness to all other persons of a registrant who has been registered for less than 1 year shall not exceed 1,000% of its net capital.~~

~~-(b) A commodity issuer and a broker-dealer shall have and maintain net capital of not less than \$25,000.00.~~

~~-(c) A commodity issuer and a broker-dealer shall have and maintain a reserve of not less than \$10,000.00 in a checking or savings account in a bank or savings institution organized under the laws of the United States or of any state or in a certificate of deposit issued by a bank or savings institution so organized.~~

~~-(4) The administrator, by order which may apply individually or to a class, may establish a lower net capital requirement, a lower cash reserve requirement, or a higher maximum ratio of aggregate indebtedness to net capital, either unconditionally or upon special terms or conditions, for a registrant who satisfies the administrator that because of the special nature of its business, its financial condition, and the safeguards that have been established for the protection of customers' funds, investors would not be adversely affected.~~

~~-(5) A registrant not in compliance with the aggregate indebtedness, net capital, or cash reserve requirements shall cease soliciting new business and shall immediately notify the administrator in writing.~~

~~-(6) For the purposes of this rule, and to insure uniform interpretation, the terms "aggregate indebtedness" and "net capital" shall have the respective meanings as defined in rule 15c3-1, 17 C.F.R. §240.15c3-1 (1978) under the securities exchange act of 1934. A copy of any pertinent subordination agreement shall be filed with the administrator within 10 days after the agreement has been entered into and shall meet the requirements of a "satisfactory subordination agreement" as that term is defined in rule 15c3-1, 17 C.F.R. §240.15c3-1 (1978).~~

**R 451.602.7 Broker-dealers' bonds; surety. Rescinded.**

~~Rule 602.7. A broker-dealer whose net capital as defined by rule, regardless of whether or not he is exempt from that rule, does not exceed \$50,000.00 shall file with the administrator a surety bond in the amount of \$10,000.00 on a form provided by the administrator and shall maintain such bond in that amount at all times while registered as a broker-dealer. If a suit is brought to enforce any liability on the bond, the broker-dealer as principal shall promptly notify the administrator thereof; and if the bond principal amount is reduced by any recovery against it, the bond shall be immediately restored to \$10,000.00. In addition to causes of action under section 410 of the act, the bond shall also be for the use and benefit of any persons who may have a cause of action in this state by reason of any embezzlement, defalcation or misappropriation of securities or funds by the principal, its agents and employees. The administrator may exempt a registered broker-dealer from this bond requirement or may vary its terms, only if justified and appropriate under special circumstances.~~

**R 451.602.8 Broker-dealers' bonds; cash or securities. Rescinded.**

~~Rule 602.8. In lieu of the bond required under R 451.602.7, a broker-dealer may make a deposit of \$10,000.00 or a deposit of securities having a market value of \$12,500.00 on the date of deposit which shall be restored to \$12,500.00 in the event of any recovery. Such deposit shall consist of securities which are the obligations of and are guaranteed as to both principal and interest by the government of the United States, the government of a state, or a municipality within the United States. The deposit of cash or securities shall be held in trust or in escrow with a state or national~~

~~bank within Michigan, and subject to an agreement satisfactory to the administrator with the same coverage as is required in a surety bond under R 451.602.7.~~

**R 451.603.1 Broker-dealers' records. Rescinded.**

~~Rule 603.1. (1) A broker-dealer shall make and keep current the following books and records relating to his business:~~

~~(a) Blotters, or other records of original entry, containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and all other debits and credits.~~

~~(b) Ledgers, or other records, reflecting all assets and liabilities, and income, expense, and capital accounts.~~

~~(c) Ledger accounts, or other records, itemizing separately as to each cash and margin account of every customer and of such member, broker, or dealer and the partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for that account and all other debits and credits of that account.~~

~~(d) Ledgers, or other records, reflecting the following:~~

~~(i) Securities in transfer.~~

~~(ii) Dividends and interest received.~~

~~(iii) Securities borrowed and securities loaned.~~

~~(iv) Monies borrowed and monies loaned, together with a record of the collateral therefor and any substitutions in such collateral.~~

~~(v) Securities failed to receive and failed to deliver.~~

~~(e) A securities record or ledger reflecting separately for each security as of the clearance date of "long" or "short" positions, including securities in safekeeping, carried by each member, broker, or dealer for his account or for the account of his customers or partners, and showing the location of all securities long and the offsetting position to all securities short and, in all cases, the name or designation of the account in which each position is carried.~~

~~(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.~~

~~(g) A memorandum of each purchase and sale of securities for the account of such member, broker, or dealer, showing the price and, to the extent feasible, the time of execution.~~

~~(h) Copies of confirmations of all purchases and sale of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such member, broker, or dealer.~~

~~(2) A broker-dealer shall preserve, for not less than 6 years, all records required to be made pursuant to subdivisions (a), (b), (c), and (e) of subrule (1), and, for not less than 3 years, all records required to be made pursuant to subdivisions (d), (f), (g), and (h) of subrule (1).~~

~~(3) A registered commodities issuer and a broker-dealer transacting business primarily in commodity contracts shall make and keep true, accurate, and current the following books and records relating to its business:~~

~~(a) Journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in a ledger.~~

~~(b) General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.~~

~~(c) A memorandum of each order given by the registrant for the purchase or sale of any commodity contract, of any instruction received by the registrant from a client concerning the purchase, sale, receipt, or delivery of a particular commodity contract, and a memorandum of any~~

~~modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation, shall identify the person connected with the registrant who recommended the transaction to the client and the person who placed the order, and shall show the account for which entered, the date of the entry, and the registrant by or through whom executed where appropriate. An order entered pursuant to the exercise of a power of attorney shall be so designated.~~

~~-(d) All check books, bank statements, cancelled checks, and cash reconciliations of the registrant.~~

~~-(e) All bills or statements, or copies thereof, paid or unpaid, relating to the business of the registrant.~~

~~-(f) All trial balances, financial statements, and internal audit working papers relating to the business of the registrant.~~

~~-(g) A financial ledger record which shows separately for each customer all charges against and credits of a customer's account, including, but not limited to, funds or securities deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions.~~

~~-(h) A record of transactions which show separately for each account, including house accounts, all commodity contract transactions executed for the account, including the date, price, quantity, market, commodity, and, when applicable, the delivery date, option expiration date, or other relevant date.~~

~~-(i) A record or journal which shows separately for each business day complete details of all commodity contract transactions executed on that day, including the date, price, quantity, market, commodity, future if applicable, and the person for whom the transaction was made.~~

~~-(j) A record of all securities and property received from customers in lieu of money to margin, guarantee, or secure the commodity trades and contracts of the customers. The records shall show separately for each customer a description of the securities or property received, the name and address of the customer, the dates when the securities or property were received, the identity of the depositories or other places where the securities or property are segregated, the dates of deposits and withdrawals from the depositories, and the dates of return of the securities or property to the customer, or other disposition thereof, together with the facts and circumstances of the other disposition.~~

~~-(k) Originals of all written communications received, and copies of all written communications sent, by the registrant relating to any recommendation made, or proposed to be made, and any advice given, or proposed to be given; any receipt, disbursement, or delivery of funds, commodity contracts, securities, or other property; the placing or execution of any order to purchase or sell any commodity contract; or market information or conditions that affect, or tend to affect, the price of a commodity. The registrant is not required to keep any unsolicited market letters and other similar communication of general public distribution not prepared by or for the registrant.~~

~~-(l) A record, in permanent form, which shows for each customer the customer's full name, home address, home telephone number, business address, business telephone number, social security number, occupation, marital status, approximate age, approximate income, approximate net worth, investment objectives, other information concerning the customer's financial situation and needs, and the name and address of any other person guaranteeing the account.~~

~~-(m) A file for each agent who is or has been employed by the registrant, copies of the agents' application for registration with the administrator, copies of all correspondence sent to or received from the administrator with respect to the agent, a record of disciplinary actions which have been taken against the agent by the registrant, and all administrative, civil, or criminal proceedings in~~

~~which the agent has been named as a respondent or defendant in connection with commodity or securities activities.~~

~~–(n) Minutes and other appropriate records with respect to meetings of the board of directors.~~

~~–(o) A copy of each advertisement used, showing the dates and publications in which the advertisement appeared.~~

~~–(p) A copy of each notice, circular, investment letter, bulletin, report, analysis, brochure, disclosure document, prospectus, form letter, or other sales literature circulated by the registrant.~~

~~–(q) A file with a copy of each complaint letter received from customers, together with a copy of the response.~~

~~–(r) A copy of every confirmation and every statement sent to a customer.~~

~~–(s) A consolidation record of all commodity transactions outstanding, showing, as to each appropriate classification of each commodity, the position of the registrant and its aggregate liability to its customers.~~

~~–(4) A registrant shall preserve, for not less than 6 years, all records required to be made pursuant to subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (q), (r), and (s) of subrule (3), and, for not less than 3 years, all records required to be made pursuant to subdivisions (o) and (p) of subrule (3).~~

**R 451.603.2 Broker dealers' confirmations. Rescinded.**

~~–Rule 603.2. A confirmation of each transaction for or with a customer shall be sent to the customer before the close of the next full business day after the transaction is made, unless unusual circumstances are present in which event it shall be sent as promptly as possible. The confirmation shall set forth with particularity all pertinent information including all charges and shall clearly show in what capacity the broker dealer acted.~~

**R 451.603.5 Investment adviser; books and records. Rescinded.**

~~–Rule 603.5. (1) An investment adviser shall make and keep current such books and records relating to the investment adviser's business as are required by the securities and exchange commission to be made and kept current by registered investment advisers under the investment advisers act of 1940, 15 U.S.C. §80b et seq., and such other books and records relating to the investment adviser's business as the administrator may reasonably require.~~

~~–(2) An investment adviser, when acting as a finder, shall make and keep current such books and records relating to the investment adviser's business activity as a finder as are reasonably necessary to demonstrate compliance with section 102(c) of the act.~~

~~–(3) An investment adviser, when acting solely as a finder and engaging in no other activities as an investment adviser, shall only be required to make and keep current such books and records as are required by subrule (2) of this rule.~~

**R 451.604.1 Failure to complete or withdraw application for registration. Rescinded.**

~~–Rule 604.1. If an applicant for registration as a broker dealer, agent, or investment adviser fails to complete or withdraw an application within 90 days from the date of filing, the administrator may withdraw the application or commence proceedings to deny the application on the basis of section 204(a)(1)(A) of the act.~~

**R 451.604.2 Unethical business practices by broker dealer or agent. Rescinded.**

~~–Rule 604.2. Unethical business practices by a broker dealer or agent within the purview of section 204(a)(1)(G) of the act, include, but are not limited to, the following:~~

- ~~–(a) Failure to segregate and earmark customers' free securities or securities in safekeeping.~~
- ~~–(b) In the offer of a commodity contract or security, failure to reveal the existence of a markup over cost charged by the seller.~~

**R 451.604.3 Examination of applicants. Rescinded.**

~~–Rule 604.3. (1) As a condition to obtaining registration, an applicant for registration as a broker-dealer which is a proprietorship and an applicant for registration as an agent shall take and pass a written examination testing the person's knowledge of the securities business, the act, and the rules thereunder. The test shall be evidence of the person's qualifications as to training and knowledge. This examination and the minimum passing grade may be varied for any class of applicants. The administrator shall waive this examination requirement in the case of applicants who were registered within the past 2 years or who have passed this examination within the past 2 years. The administrator may waive this examination requirement, in whole or in part, in the case of applicants who have passed a comparable examination within the past 2 years, applicants who meet certain standards of experience, or applicants whose activities will be so restricted as to make imposition of the examination requirements inappropriate.~~

~~–(2) As a condition to obtaining a registration, an applicant for registration as a broker-dealer which is a proprietorship transacting business primarily in commodities and an applicant for registration as a commodities agent or commodities investment adviser shall take and pass a written examination testing the person's knowledge of the commodities business, the act, and the rules thereunder. The test shall be evidence of the person's qualifications as to training and knowledge. This examination and the minimum passing grade may be varied for any class of applicants. The administrator shall waive this examination requirement in the case of applicants who were registered within the past 2 years or who have passed this examination within the past 2 years. The administrator may waive this examination requirement, in whole or in part, in the case of applicants who have passed a comparable examination within the past 2 years, applicants who meet certain standards of experience, or applicants whose activities will be so restricted as to make imposition of the examination inappropriate.~~

### PART 3. REGISTRATION OF SECURITIES

**R 451.704.1 Registration by qualification; prospectus. Rescinded.**

~~–Rule 704.1. In the case of a registration by qualification, unless the administrator in a specific instance permits otherwise, a prospectus prepared in accordance with prospectus instructions (form PI) and previously filed with the administrator shall be sent or given to each prospective purchaser within a reasonable time before a commitment to purchase is made. If the prospectus or any part thereof becomes misleading as to any material fact, or facts, or omits to state a material fact~~

~~necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, it shall be revised or supplemented, and the revision or supplementation shall be submitted to the administrator prior to use. A prospectus shall not be used if the administrator has informed the registrant of an objection thereto. A prospectus shall not be used without revision or supplementation for more than 13 months from its date.~~

**R 451.704.2 Registration by qualification; reports and investigations. Rescinded.**

~~Rule 704.2. As a condition of registration by qualification, the administrator may require that a report by an accountant, engineer, appraiser or other professional person be filed, and may require that the estimated cost of such report be deposited in advance by the registrant in an escrow account. The administrator may also designate an employee to make an investigation of the books, records and affairs of any applicant for registration by qualification and may require the estimated cost thereof to be deposited in advance by the applicant in an escrow account. Unless waived by the administrator, a registrant by qualification shall submit a complete audit report of the issuer covering the last fiscal year, certified by independent or certified public accountants.~~

**R 451.705.4 Reports by registrants. Rescinded.**

~~Rule 705.4. So long as a securities registration statement is effective a registrant shall file reports as required by order of the administrator.~~

**R 451.705.6 Distribution of preliminary prospectus. Rescinded.**

~~Rule 705.6. In the case of the filing of a registration statement under section 304 of the act or a filing of a request for an exemption order under section 402 of the act pursuant to the provisions of section 307(b) of the act, all of the following requirements shall be complied with:~~

~~(a) The applicant shall provide the administrator with written notice of his intent to distribute a preliminary prospectus and any amendments thereof.~~

~~(b) Any preliminary prospectus distributed pursuant to section 307(b) of the act shall contain on its cover a legend in substantially the following form: "THIS PRELIMINARY PROSPECTUS AND THE INFORMATION CONTAINED THEREIN ARE SUBJECT TO COMPLETION OR AMENDMENT. THESE SECURITIES SHALL NOT BE SOLD NOR SHALL OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE PROSPECTUS IS DELIVERED IN FINAL FORM. UNDER NO CIRCUMSTANCES SHALL THIS PRELIMINARY PROSPECTUS CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION, OR SALE IS UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH STATE."~~

~~(c) Recipients of a preliminary prospectus distributed pursuant to section 307(b) of the act shall have 48 hours after receipt of a final prospectus in which to rescind the purchase of the securities being offered and shall be notified in writing of such right at the time of receipt of a final prospectus.~~

~~(d) Recipients of a preliminary prospectus distributed pursuant to section 307(b) of the act shall be notified in writing at the time of receipt of a final prospectus that such final prospectus may materially differ from the preliminary prospectuses previously distributed.~~

**R 451.706.1 Incomplete registration statements. Rescinded.**

~~Rule 706.1. If a registrant fails to complete or withdraw a registration statement within 7 months from the date of filing, the administrator may commence proceedings to deny on the basis of section 306(a)(1) and 306(a)(2)(A) of the act.~~

**R 451.706.2 Debt securities and preferred stock; junior equity. Rescinded.**

~~Rule 706.2. An offering of debt securities or preferred stock may be deemed to be on unfair terms within the meaning of section 306(a)(2)(E) of the act unless there are junior securities and surplus of an amount equal to at least 50% of the class of securities being offered. This requirement will be waived only when justified by the normal debt capital ratios prevailing in the particular~~

~~industry, the history of interest or dividend coverage, the participation in earnings and management, or the restricted nature of the offering.~~

**R 451.706.4 Contractuals; 30 day letter. Rescinded.**

~~Rule 706.4. A securities registration statement covering mutual fund periodic payment plan certificates will be deemed to tend to work an imposition and be an offering upon unfair terms unless the registrant furnishes an undertaking to send or cause to be sent by first class mail to each purchaser, at the time the certificate is issued or prior thereto, (a) a separate printed statement showing the sales load, fees, deductions and other charges to be deducted from each installment payment, (b) a duplicate copy of any application or request letter signed by the purchaser at the time he applied for or agreed to purchase, and (c) a letter specifically calling attention to the statement of charges. The letter shall also advise the purchaser that if after making his initial payment, whether for 1 or more installments, he shall for any reason whatever elect to surrender his certificate for cancellation, he will be refunded the full amount paid in by him, if the written request for such cancellation is made within 30 days, or any longer period indicated, after the mailing of such letter, or after the mailing of the certificate when the letter advises the certificate will be mailed at a later date. In lieu of the foregoing, the administrator may accept a satisfactory alternative undertaking. The requirement of this rule is in addition to, and does not preclude the purchaser from pursuing, any remedy afforded by section 410 of the act.~~

**R 451.706.8 Warrants and stock purchase options. Rescinded.**

~~Rule 706.8. (1) A registration statement covering an offering of capital stock involving warrants or stock purchase options to others than all the purchasers of securities will generally be regarded as not being in the public interest and as being objectionable under subparagraphs (E) and (F) of section 306(a)(2) of the act unless the requirements hereinafter set forth are met and justify the issuance of the warrants or stock options.~~

~~(2) Options to management in the nature of restricted or qualified stock options for incentive purposes will be considered justified if reasonable in number and method of exercise.~~

~~(3) Options to employees, or their nominees, pursuant to stock purchase plans or profit sharing plans will be considered justified if reasonable in number and method of exercise.~~

**R 451.706.24 Waiver of the affiliated broker-dealer prohibition contained in section 402(b)(9)(C) of the act. Rescinded.**

~~Rule 706.24. Unless the administrator by order determines otherwise, the condition set forth in section 402(b)(9)(C) of the act, that a commission is not paid or given directly or indirectly for soliciting any prospective purchaser in this state, except to a broker-dealer who is not affiliated with the issuer or its affiliates, shall be waived as to a broker-dealer who has been continuously registered pursuant to this act for not less than 2 years.~~

**R 451.706.26 Definitions; corporation equity securities registration. Rescinded.**

~~Rule 706.26. (1) As used in this rule:~~

~~(a) "Accredited investors" means those investors defined in regulation D, 17 C.F.R. S230.501(a)(1) to (3) (1982).~~

~~(b) "Continuing commitment of key management" means either of the following:~~

~~(i) After completion of the offering, key management continues to have equity ownership in the issuer of 10% of the shares outstanding;~~

~~(ii) Key management either places in escrow for a term of 3 years all of the shares of stock of the issuer which are directly or indirectly owned by key management or key management places in escrow the number of shares in combination with the amount of investment identified in paragraph (i) of this subdivision which would equal 10% of the offering. The escrow required under this paragraph shall be, for a period of 3 years, with an independent escrow agent approved by the administrator. Shares will be released before the 3 years if the stock maintains a market price on the American or New York stock exchange or national association of securities dealers automated quotation (NASDAQ) equal to the offering price for 90 consecutive days or if the administrator so orders.~~

~~(c) "Developmental company" means a company making an initial public offering where there is either no established market value for the securities of the company or where the company has no significant earnings.~~

~~(d) "Firm underwriting" means that the underwriter or underwriters agree to purchase all of the securities being offered for their own account.~~

~~(e) "Key management" means those officers, directors, or employees of the issuer who the issuer holds out as essential to the continuing management of the company, and, therefore, their continued role in the management of the company is considered material to the investment.~~

~~(f) "Qualified underwriter" means a managing underwriter registered with the New York stock exchange or another underwriter determined by the administrator to be qualified upon consideration of factors such as the following:~~

~~(i) Number of underwriters involved.~~

~~(ii) Whether the underwriters are purchasing for their own account.~~

~~(iii) Size and experience of underwriter staff.~~

~~(iv) Independence of underwriter.~~

~~(v) Past history of underwriter.~~

~~(vi) Total size of offering.~~

~~(g) "Qualified venture capital company" means a person who satisfies 1 of the following provisions:~~

~~(i) Operates a small business investment company licensed under the small business investment act of 1958, as amended, 15 U.S.C. §631 et seq.~~

~~(ii) Has \$1,000,000.00 worth of assets, not more than 20% of which is invested in the securities of the issuer whose primary business is investing in developmental stage companies or "eligible small business companies," as defined in the regulations of the small business administration, and has not less than \$100,000.00 invested in the securities of the issuer.~~

~~(iii) Has \$5,000,000.00 worth of assets, not more than 20% of which is invested in the securities of the issuer, and the company has invested not less than \$100,000.00 in the securities of the issuer.~~

~~(2) In the registration of the equity securities of a corporation, if the following conditions are satisfied, and in the absence of unusual circumstances, the offering shall not be deemed to be on unfair terms; have unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation; or have unreasonable amounts of promoter's compensation or participation:~~

~~(a) The offering is made through a firm underwriting by a qualified underwriter and all of the following requirements are satisfied:~~

~~(i) There is full and fair disclosure of dilution and promoter's compensation and participation. This condition is presumed to be satisfied if the securities being offered are reviewed and cleared by the securities and exchange commission.~~

~~(ii) The offering is made in compliance with the rules of fair practice of the national association of securities dealers (NASD).~~

~~(iii) The total amount of the offering is \$1,000,000.00 or more.~~

- ~~–(b) The offering is made through other than a firm underwriting by a qualified underwriter and satisfies all of the following conditions:~~
- ~~–(i) There is full and fair disclosure of dilution and promoter's compensation and participation.~~
- ~~–(ii) The offering is made in compliance with the rules of fair practice of the national association of securities dealers (NASD).~~
- ~~–(iii) Investors satisfy any of the following requirements:~~
- ~~–(A) Twenty five percent or more of the offering is purchased by accredited investors and all other investors purchase on the same terms as those accredited investors.~~
- ~~–(B) Both before and after the offering, 25% of the outstanding shares are owned by qualified venture capital companies.~~
- ~~–(C) Any combination of subparagraphs (A) and (B) of this paragraph.~~
- ~~–(e) The offering is made by a developmental company and neither subdivision (a) nor subdivision (b) of this subrule is applicable and all of the following conditions are satisfied:~~
- ~~–(i) Provision is made for the continuing commitment of key management.~~
- ~~–(ii) There is full and fair disclosure of dilution and promoter's compensation and participation.~~
- ~~–(iii) The offering is made in compliance with the rules of fair practice of the national association of securities dealers (NASD).~~
- ~~–(iv) Unless the securities are sold through a registered broker/dealer, the offering will be considered unacceptable under this rule if the class of equity securities offered to the public has no voting rights or has less than equal voting rights and no preferential treatment as to dividends and liquidation is provided or the differentiation is not otherwise justified.~~
- ~~–(v) The initial offering price to the public is not less than \$5.00 per share.~~

#### PART 4. GENERAL PROVISIONS

##### R 451.801.3 Persons excluded from definition of "agent." **Rescinded.**

~~–Rule 801.3. A person, when representing an issuer, broker dealer, or any other person in effecting transactions in certificates of interest; participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in other securities involving oil, gas, or mining ventures exempted by section 402(b)(9)(D)(1)(ii) of the act, whether or not any commission is paid or given for soliciting any person in this state, shall be excluded from the definition of "agent" contained in section 401(b) of the act.~~

##### R 451.801.4 Persons excluded from definition of "broker-dealer." **Rescinded.**

~~–Rule 801.4. (1) A person, when effecting transactions in certificates of interest; participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in other securities involving oil, gas, or mining ventures exempted by section 402(b)(9)(D)(1)(ii) of the act, shall be excluded from the definition of "broker-dealer" contained in section 401(c) of the act.~~

~~–(2) The definition of the word "broker-dealer" shall exclude those individuals excluded by order of the administrator from the definition of "agent," unless the order expressly states otherwise.~~

##### R 451.802.2 Recognized securities manuals. **Rescinded.**

~~Rule 802.2. The administrator recognizes the following securities manuals under section 402(b)(2)(A) of the act:~~

- ~~–Moody's industrial manual~~
- ~~–Moody's transportation manual~~

- ~~–Moody's public utility manual~~
- ~~–Moody's bank and finance manual~~
- ~~–Moody's municipal and government manual~~
- ~~–Moody's OTC industrial manual~~
- ~~–Standard and Poor's corporation records~~
- ~~–Best's life insurance reports~~
- ~~–Best's insurance reports (fire and casualty)~~

R 451.803.3 ~~"Consulting fee" defined; offering circular; delivery; rescission of agreement.~~  
**Rescinded.**

~~–Rule 803.3 (1) As used in section 402(a)(8) of the act, the term "consulting fee" means any payment or oral or written promise or contract to pay which is provided to any person in return for advice or assistance rendered, or to be rendered, to a nonprofit person in connection with the offer or sale of a security. The term shall not include advice or assistance rendered by the following licensed or otherwise regulated persons so long as performance of these services is solely incidental to the practice of his or her profession: attorneys, certified public accountants, or officers or employees of a financial institution whose securities are exempt pursuant to section 402(a)(3), (4), or (5) of the act.~~

~~–(2) Any person designated by section 402(a)(8) of the act as being required to file an offering circular shall, 10 days before the offer or sale of the security, file with the administrator the offering circular. Offers and sale of the securities shall not be made subsequent to an order by the administrator disallowing the exemption.~~

~~–(3) The offering shall be made upon such conditions and with information and provisions in the offering circular as may be determined by the administrator so that the offering does not work or tend to work a fraud, deception, or imposition and so that the offering is not made on unfair terms.~~

~~–(4) The offering circular shall be delivered to each purchaser not less than 48 hours before the sale to the purchaser.~~

~~–(5) As an alternative to subrule (4) of this rule, the issuer may elect, upon clear written disclosure, to provide a period of not less than 48 hours subsequent to delivery of the offering circular and confirmation in which the purchaser may rescind the agreement without prejudice.~~

R 451.803.5 ~~Intra-industry exemption for persons engaged in oil, gas, and mineral business.~~  
**Rescinded.**

~~–Rule 803.5. (1) Pursuant to section 402(b)(9)(D)(1)(ii) of the act, sales of certificates of interest; participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or of other securities relating to oil, gas, or mining ventures may be made to any number of either of the following:~~

~~–(a) Persons who are engaged on a full time basis in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading of oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in any combination of the foregoing businesses and who have not less than 3 years of experience in any such business or combination thereof.~~

~~–(b) Corporations or any subsidiaries of such corporations, any of the stock of which is listed on the New York stock exchange or the American stock exchange, that are engaged in any business specified in subdivision (a) of this subrule, or combination thereof, as a principal line of business.~~

~~(2) As used in this rule, "engaged on a full-time basis," when applied in relation to the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading oil, gas, or mining titles or leases; payments out of production under such titles or leases; or any combination of the foregoing businesses shall mean that the person is engaged in such business as his or her principal business activity and, in the case of an individual, that the person is engaged in any such business in a management capacity and either maintains an office for the conduct of such business or is employed by a person maintaining such office.~~

~~(3) For the purpose of this rule, a person shall be deemed to have had 3 years of experience in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading oil, gas, or mining titles or leases; or payments out of production under such titles or leases, if such person was engaged in any such business, or combination thereof, on a full-time basis during the period in question. However, a corporation, partnership, association, or other business entity that was engaged in any such business on a full-time basis during the period in question shall nonetheless be deemed to have had 3 years of experience in any such business or combination thereof, if such entity had at least 1 officer or partner, or person of similar status, who was engaged in any such business, or combination thereof, on a full-time basis during the period in question.~~

~~(4) The numerical limitation on sales provided for in section 402(b)(9)(D)(1)(ii) of the act shall not be applicable to sales in compliance with this rule. Sales may be made hereunder to an unlimited number of purchasers described in subrule (1) of this rule without affecting the availability of the exemption provided for in section 402(b)(9)(D)(1)(ii) of the act.~~

~~(5) Any compensation paid to full-time salaried employees effecting sales which are in compliance with this rule shall not be deemed to be a commission under sections 401(b) and 402(b)(9)(C) of the act.~~

**R 451.803.8 Multijurisdictional disclosure system offerings. Rescinded.**

~~Rule 803.8. (1) This rule shall apply to the registration by coordination pursuant to the provisions of section 303 of the act in~~

~~Michigan of securities that are registered with the securities and exchange commission in accordance with the multijurisdictional disclosure system adopted in securities and exchange commission release no. 33-6902, 56 F.R. 30036 (July 1, 1991).~~

~~(2) Pursuant to section 303(d) of the act, the 20-day registration statement and 10-day amendment filing requirements set forth in section 303(c)(2) of the act shall be reduced to 7 days for a class of offering for which a registration statement has been filed with the administrator on a form designated as form F 7, F 8, F 9, or F 10 by the securities and exchange commission.~~

~~(3) Under the grant of authority to the administrator in section 412(c) of the act, the administrator has determined that financial statements which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement which has been filed with the administrator pursuant to the provisions of section 303 of the act and which has been designated as form F 7, F 8, F 9, or F 10 by the securities and exchange commission if 1 of the following provisions is satisfied:~~

~~(a) The securities that are the subject of a registration statement designated as form F 7 by the securities and exchange commission are offered for cash upon the exercise of rights granted to existing security holders.~~

~~(b) The securities that are the subject of a registration statement designated as form F 8 by the securities and exchange commission are securities to be issued in an exchange offer, merger, or other business combination.~~

~~-(c) The securities that are the subject of the registration statement designated as form F-9 by the securities and exchange commission are either nonconvertible preferred stock or nonconvertible debt and which shall be rated in 1 of the 4 highest rating categories by 1 or more nationally recognized statistical rating organizations. Preferred stock and debt securities that are not convertible for at least 1 year from the date of effectiveness of the registration statement will be deemed to meet the requirement of this subdivision.~~

~~-(d) The securities that are the subject of a registration statement designated as form F-10 by the securities and exchange commission are offered and sold pursuant to a prospectus in which the securities and exchange commission has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.~~

R 451.803.10 ~~Exempt securities listed or approved for listing on the Chicago board options exchange. Rescinded.~~

~~Rule 803.10. A security that is listed or approved for listing upon notice of issuance on the Chicago board options exchange and any other security of the same issuer that is of senior or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of these securities shall be exempt from sections 301 and 403 of the act. The administrator may, after giving notice of hearing to all interested parties, provide an opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal, do any of the following:~~

~~-(a) Deny or revoke this exemption by order for a specific issue of securities.~~

~~-(b) Deny this exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors.~~

~~-(c) Decertify the exchange by order if the administrator determines that the exchange's requirements are so changed, or insufficiently applied that the public interest and protection of investors contemplated by the requirements is no longer afforded.~~

R 451.803.11 ~~Small corporate offering registration. Rescinded.~~

~~Rule 803.11. (1) This rule offers an optional method of registration pursuant to the provisions of section 304 of the act for corporations issuing securities that are exempt from registration with the federal exemption, regulation D, 17 C.F.R. S230.504, adopted in securities and exchange commission release no. 33-6389, 47 F.R. 11251 (March 16, 1982), and as amended in release nos. 33-6758, 53 F.R. 7866 (March 10, 1988), and 33-6825, 54 F.R. 11369 (March 20, 1989), or pursuant to the provisions of section 3(a)(11) of the securities act of 1933, 15 U.S.C. S77c(a)(11). Issuers eligible for this method of registration shall use a registration form approved by the administrator as the disclosure document for the offering. This method of registration shall be known as SCOR registration.~~

~~-(2) Both of the following provisions apply to SCOR applications:~~

~~-(a) Applications shall be in compliance with the provisions of this rule; however, the provisions of this rule may be modified or waived by the administrator.~~

~~-(b) Where individual characteristics of specific offerings warrant modification from the provisions of this rule, they will be accommodated, insofar as possible, while still being consistent with the spirit of this rule.~~

~~-(3) All of the following provisions apply to the availability of SCOR registration:~~

~~-(a) SCOR registration is intended to allow small corporations to conduct limited offerings of securities. SCOR registration uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain~~

~~issuers may not be able to make adequate disclosure using the SCOR registration format and will, therefore, be unable to utilize SCOR registration. SCOR registration shall not be utilized by the following issuers and programs unless written permission is obtained from the administrator based upon a showing that adequate disclosure can be made to investors using the SCOR registration format:~~

~~–(i) Holding companies, companies that have a principal purpose of owning stock in, or supervising the management of, other companies.~~

~~–(ii) Portfolio companies, such as real estate investment trusts.~~

~~–(iii) Issuers with complex capital structures.~~

~~–(iv) Commodity pools.~~

~~–(v) Equipment leasing programs.~~

~~–(vi) Real estate programs.~~

~~–(b) SCOR registration is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, each of the following requirements shall be met:~~

~~–(i) The issuer shall be a corporation that is organized under the laws of one of the states or possessions of the United States.~~

~~–(ii) The issuer shall not engage in petroleum exploration or production or mining or other extractive industries.~~

~~–(iii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.~~

~~–(iv) The offering price for common stock; the exercise price if the securities offered are options, warrants, or rights for common stock; and the conversion price if the securities are convertible into common stock shall be equal to or more than \$5.00 per share.~~

~~–(v) The aggregate offering price of the securities offered, within or outside this state, is not more than \$1,000,000.00, less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under federal exemption, regulation D, 17 C.F.R. 230.504, adopted in securities and exchange commission release no. 33-6389, 47 F.R. 11251 (March 16, 1982), and as amended in release nos. 33-6758, 53 F.R. 7866 (March 10, 1988), and 33-6825, 54 F.R. 11369 (March 20, 1989), in reliance on any exemption pursuant to the provisions of section 3(a)(11) and (b) of the securities act of 1933, 15 U.S.C. S77e(a)(11) and (b) or in violation of section 5(a) of the securities act of 1933, 15 U.S.C. S77e(a).~~

~~–(c) SCOR registration is not available to investment companies that are subject to the investment company act of 1940, 15 U.S.C. S80(a) et seq., nor is it available to issuers that are subject to the reporting requirements of section 13 or section 15(d) of the securities exchange act of 1934, 15 U.S.C. SS78m and 78o(d).~~

~~–(d) SCOR is available for registration of debt offerings only if the issuer can demonstrate a reasonable ability to service its debt.~~

~~–(4) SCOR registration shall not be available for the securities of any issuer if any of the following provisions applies to that issuer or any of its officers, directors, 10% stockholders, promoters, or any selling agents of the securities to be offered or any officer, director, or partner of such selling agent:~~

~~–(a) The individual has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within 5 years before the filing of the SCOR registration application.~~

~~–(b) The individual has been convicted, within 5 years before the filing of the SCOR registration application, of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following:~~

~~–(i) Forgery.~~

- ~~–(ii) Embezzlement.~~
- ~~–(iii) Obtaining money under false pretenses.~~
- ~~–(iv) Larceny.~~
- ~~–(v) Conspiracy to defraud.~~
- ~~–(c) The individual is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within 5 years before the filing of the SCOR registration application or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within 5 years before the filing of the SCOR registration application.~~
- ~~–(d) The individual is subject to any federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.~~
- ~~–(e) The individual is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily, or permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the securities and exchange commission entered within 5 years before the filing of the SCOR registration application. However, the prohibition of this paragraph and paragraphs (a), (b) and (c) of this subdivision shall not apply if the person who is subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer who employs the person is licensed or registered in this state and the form BD that is filed in this state discloses the order, conviction, judgment, or decree relating to the person. A person who is disqualified pursuant to the provisions of this subdivision shall not act in any capacity other than that for which the person is licensed or registered. Any disqualification pursuant to the provisions of this subdivision is automatically waived if the state securities administrator or other state or federal agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.~~
- ~~–(5) By filing for SCOR registration in this state, the registrant agrees with the administrator that the registrant will not split its common stock or declare a stock dividend for 2 years after the effectiveness of the registration without the prior written approval of the administrator.~~
- ~~–(6) In addition to filing a properly completed form and filing fee required pursuant to the provisions of section 305(b) of the act, an applicant for SCOR registration shall file all of the following exhibits with the administrator:~~
  - ~~–(a) The form of selling agency agreement.~~
  - ~~–(b) The issuer's articles of incorporation or other charter documents and all amendments thereto.~~
  - ~~–(c) The issuer's bylaws, as amended to date.~~
  - ~~–(d) Copies of any resolutions by directors setting forth terms and provisions of capital stock to be issued.~~
  - ~~–(e) Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.~~
  - ~~–(f) A specimen of the security to be offered, including any legend restricting resale.~~
  - ~~–(g) Consent to service of process accompanied by an appropriate corporate resolution.~~
  - ~~–(h) Copies of all advertising or other material that is directed, or to be furnished to investors in the offering.~~
  - ~~–(i) The form of escrow agreement for escrow of proceeds.~~
  - ~~–(j) Consent to inclusion in disclosure document of accountant's report.~~

- ~~–(k) Consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences.~~
- ~~–(l) Consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel.~~
- ~~–(m) The form of any subscription agreement for the purchase of securities in the offering.~~
- ~~–(n) An opinion of an attorney who is licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid and nonassessable, and binding on the issuer in accordance with their terms.~~
- ~~–(o) A schedule of residence street addresses of officers, directors, and principal stockholders.~~
- ~~–(p) Additional information as the administrator requires by rule or order.~~

## **PART 1. DEFINITIONS**

### **R 451.1.1 Definitions.**

**Rule 1.1. As used in these rules and in the act, if applicable:**

- (a) “3(c)(1) fund” means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the investment company act of 1940, 15 U.S.C. §80a-3(c)(1).**
- (b) “Act” means the uniform securities act of 2002, 2008 PA 551, MCL 451.2101 to 451.2703.**
- (c) “Agency cross transaction for an advisory client” means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction.**
- (d) “Impersonal advisory services” means any contract relating solely to the provision of investment advisory services under any of the following:**
  - (i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts.**
  - (ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security.**
  - (iii) Any combination of the foregoing services.**
- (e) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through 1 or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control that company.**
- (f) “CRD” means the central registration depository operated by FINRA.**
- (g) "Discretionary authority" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.**
- (h) “EDGAR” means the electronic data gathering, analysis, and retrieval system operated by the SEC.**
- (i) “EFD” means the electronic filing depository operated by the North American Securities Administrators Association, Inc.**

(j) “Entering into”, in reference to an investment advisory contract, does not include an extension or renewal without material change of any contract which is in effect immediately prior to an extension or renewal.

(k) “ESIGN” means the electronic signatures in global and national commerce act, and more specifically, chapter 96, subchapters I and II, 15 U.S.C. §§7001 to 7031.

(l) “FINRA” means the Financial Industry Regulatory Authority.

(m) “Form ADV” means the uniform application for investment adviser registration.

(n) “Form ADV-W” means the notice of withdrawal from registration as investment adviser.

(o) “Form BD” means the uniform application for broker-dealer registration.

(p) “Form BDW” means the uniform request for broker-dealer withdrawal.

(q) “Form U4” means the uniform application for securities industry registration or transfer.

(r) “Form U5” means the uniform termination notice for securities industry registration.

(s) “Form U-7” means the small company offering registration form.

(t) “IARD” means the Investment Adviser Registration Depository operated by FINRA.

(u) “Investment supervisory services” means giving of continuous advice about the investment of funds on the basis of the individual needs of each client.

(v) “NASAA” means the North American Securities Administrators Association, Inc.

(w) “NASDAQ” means the national association of securities dealers automated quotation.

(x) “Private fund adviser” means an investment adviser who provides advice solely to 1 or more qualifying private funds.

(y) “Qualifying private fund” means a private fund that meets the definition of a qualifying private fund in SEC rule 203(m)-1, 17 C.F.R. §275.203(m)-1.

(z) “SCOR” means a small corporate offering registration.

(aa) “SEC” means the United States Securities and Exchange Commission.

## PART 2. EXEMPTIONS FROM REGISTRATION OF SECURITIES

### R 451.2.1 Not-for-profit securities.

Rule 2.1. (1) The offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in section 201(g) of the act, MCL 451.2201(g), shall qualify for the self-executing exemption set forth in section 201(g), MCL 451.2201(g) only if the aggregate sales price of the issuance of the securities is \$500,000.00 or less, and sold to a bona fide member of the issuing organization without payment of a commission or consulting fee.

(2) The offer or sale of a note, bond, debenture, or other evidence of indebtedness that does not qualify for the self-executing exemption described in subrule (1) of this rule shall file with the administrator a request for exemption pursuant to section 201(g) of the act, MCL 451.2201(g), and shall comply with subrules (6) to (10) of this rule.

(3) The administrator shall apply the applicable statement of policy adopted by NASAA as listed in subrule (2) of this rule when reviewing requests for exemption authorization pursuant to section 201(g) of the act, MCL 451.2201(g).

(4) The following statements of policy are adopted by reference:

(a) “Church Bonds” as adopted by NASAA on April 14, 2002. A copy of this policy can be obtained from NASAA, 750 First Street, NE, Suite 1140, Washington, DC 20002, and is available for free online at <http://www.nasaa.org>, or from the Michigan department of licensing and regulatory affairs, corporations, securities, and commercial licensing bureau, P.O. Box 30018, Lansing, MI 48909 for a cost as prescribed in R 451.6.2.

(b) “Church Extension Fund Securities” as amended and published by NASAA on April 18, 2004. A copy of this policy can be obtained from NASAA, 750 First Street, NE, Suite 1140, Washington, DC 20002, and is available for free online at <http://www.nasaa.org>, or from the Michigan department of licensing and regulatory affairs, corporations, securities, and commercial licensing bureau, P.O. Box 30018, Lansing, MI 48909 for a cost as prescribed in R 451.6.2.

(5) The administrator may request a cross-reference table be included in a request for exemption authorization to indicate compliance with, or deviation from, the various sections of the applicable NASAA statement of policy.

(6) The request for exemption authorization shall include the documents listed in section II.A.3. of the NASAA statement of policy “Church Bonds”.

(7) All sales and advertising literature shall be filed with the administrator prior to use and shall comply with the applicable NASAA statement of policy.

(8) Each request for exemption under section 201(g) of the act, MCL 451.2201(g), shall include a nonrefundable filing fee of \$250.00.

(9) The securities that qualify for an exemption under subrule (2) of this rule are exempt when ordered by the administrator, and the exemption is effective for 1 year from the date that the securities were ordered exempt.

(10) If the securities offering is not completed during the effective period, an issuer may renew the exemption by submitting to the administrator a written request for renewal that includes any amendments to the documents filed with the initial request for exemption and a nonrefundable filing fee of \$250.00. The renewal shall be filed with the administrator within 30 days before the end of the 1 year effective date. With each renewal, the administrator may require a cross-reference sheet to demonstrate compliance with the applicable NASAA statement of policy.

#### **R 451.2.2 Recognized securities manuals.**

**Rule 2.2.** The administrator recognizes the following securities manuals under section 202(1)(b)(iv) of the act, MCL 451.2202(1)(b)(iv):

- (a) Standard & poor’s standard corporation descriptions.
- (b) Mergent’s industrial manual and news reports.
- (c) Mergent’s transportation manual and news reports.
- (d) Mergent’s public utility manual and news reports.
- (e) Mergent’s bank and finance manual and news reports.
- (f) Mergent’s municipal and government manual and news reports.
- (g) Mergent’s international manual and news reports.
- (h) Fitch’s individual stock bulletin.
- (i) Best’s insurance reports life-health.
- (j) Moody’s OTC industrial manual.

(k) Any other securities manual determined by the administrator to be a nationally recognized securities manual that requires the continuous disclosure by any issuer relying on the manual for the registration exemption.

#### **R 451.2.3 Bad actor disqualification.**

**Rule 2.3.** (1) No exemption under the act shall be available for a sale of securities under the following conditions if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20% or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any

capacity at the time of such sale; any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid, directly or indirectly, remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor:

(a) Has been convicted of any felony or misdemeanor under all of the following:

(i) In connection with the purchase or sale of any security.

(ii) Involving the making of any false filing with the SEC or any securities administrator.

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, investment adviser representative, or paid solicitor of purchasers of securities.

(b) Is subject to any order, judgment, or decree of any court of competent jurisdiction, that at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice under the following conditions:

(i) In connection with the purchase or sale of any security.

(ii) Involving the making of any false filing with the SEC or any securities administrator.

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, investment adviser representative, or paid solicitor of purchasers of securities.

(c) Is subject to a final order of a state securities commission, or an agency or officer of a state performing like functions; a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission, or an agency or officer of a state performing like functions; an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that does the following:

(i) At the time of such sale, bars the person from any of the following:

(A) Association with an entity regulated by such commission, authority, agency, or officer.

(B) Engaging in the business of securities, insurance or banking.

(C) Engaging in savings association or credit union activities.

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within 10 years before such sale.

(d) Is subject to an order of the SEC entered pursuant to section 15(b) or 15B(c) of the securities exchange act of 1934, 15 U.S.C. §78o(b) or §78o–4(c), or section 203(e) or (f) of the investment advisers act of 1940, 15 U.S.C. §80b–3(e) or (f), that, at the time of the sale does any of the following:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer, or investment adviser.

(ii) Places limitations on the activities, functions, or operations of such person.

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock.

(e) Is subject to any order of the SEC that orders the person to cease and desist from committing or causing a violation or future violation of any of the following:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including, without limitation, section 17(a)(1) of the securities act of 1933, 15 U.S.C. §77q(a)(1), section 10(b) of the securities exchange act of 1934, 15 U.S.C. §78j(b), and 17 C.F.R. §240.10b–5, section 15(c)(1) of the securities exchange act of 1934, 15 U.S.C. §78o(c)(1), and section 206(1) of the investment advisers

act of 1940, 15 U.S.C. §80b–6(1), or any other rule or regulation promulgated pursuant to the legislation identified in this subrule.

(ii) Section 5 of the securities act of 1933, 15 U.S.C. §77e.

(f) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade.

(g) Has filed, as a registrant or issuer, or was named as an underwriter in, any registration statement or regulation A offering statement filed with the SEC pursuant to 17 C.F.R. §230.251 et seq., that was the subject of a refusal order, stop order, or order suspending the regulation A exemption pursuant to 17 C.F.R. §230.251 et seq., or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued.

(h) Is subject to a United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(2) Subrule (1) of this rule shall not apply under any of the following conditions:

(a) Upon a showing of good cause and without prejudice to any other action by the administrator, if the administrator determines that it is not necessary under the circumstances that an exemption be denied.

(b) If, before the relevant sale, the court or regulatory authority that entered the relevant order, judgment, or decree advises in writing, whether contained in the relevant order, judgment, or decree, or separately to the administrator or its staff, that disqualification under subrule (1) of this rule should not arise as a consequence of such order, judgment, or decree.

(c) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known, that a disqualification existed under subrule (1) of this rule. For purposes of this subdivision, an issuer shall not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry shall vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(3) For purposes of subrule (1) of this rule, events relating to any affiliated issuer that occurred before the affiliation arose shall not be considered disqualifying if the affiliated entity is not either of the following:

(i) In control of the issuer.

(ii) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

#### **R 451.2.4 Intra-industry exemption for persons engaged in oil, gas, and mineral business.**

**Rule 2.4.** (1) Pursuant to section 203 of the act, MCL 451.42203, sales of certificates of interest; participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or of other securities relating to oil, gas, or mining ventures are exempt from registration requirements of section 301 of the act, MCL 451.2301, when the offers or sales are made to any of the following:

(a) Persons who are engaged on a full-time basis in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading of

oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in any combination of the foregoing businesses and who have at least 3 years of experience in any such business or combination thereof.

(b) Corporations or any subsidiaries of such corporations, any of the stock of which is listed on the New York stock exchange or the American stock exchange, that are engaged in any business specified in subdivision (a) of this subrule, or combination thereof, as a principal line of business.

(2) As used in this rule, "engaged on a full-time basis," when applied in relation to the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading oil, gas, or mining titles or leases; payments out of production under such titles or leases; or any combination of the foregoing businesses means that the person is engaged in such business as his or her principal business activity and, in the case of an individual, that the person is engaged in any such business in a management capacity and either maintains an office for the conduct of such business or is employed by a person maintaining such office.

(3) For the purpose of this rule, a person shall be deemed to have had 3 years of experience in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading oil, gas, or mining titles or leases; or payments out of production under such titles or leases, if such person was engaged in any such business, or combination thereof, on a full-time basis during the period in question. However, a corporation, partnership, association, or other business entity that was engaged in any such business on a fulltime basis during the period in question shall nonetheless be deemed to have had 3 years of experience in any such business or combination thereof, if such entity had at least 1 officer or partner, or person of similar status, who was engaged in any such business, or combination thereof, on a full-time basis during the period in question.

#### **R 451.2.5 Purchaser.**

Rule 2.5. For purposes of section 202(1)(n) of the act, MCL 451. 2202(1)(n), a natural person, spouse, and minor children residing in the same household shall be considered as 1 purchaser.

### **PART 3. REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED SECURITIES**

#### **R 451.3.1 Notice filing.**

Rule 3.1. A notice filing for a security issued by an investment company that is a federal covered security as defined in section 18(b)(2) of the securities act of 1933, 15 U.S.C. §77r, that is not otherwise exempt under sections 201 to 203 of the act, MCL 451.2201 to 451.2203, shall include the following, as applicable:

- (a) Before the initial offer of a federal covered security in this state all of the following:
  - (i) All records that are part of a federal registration statement filed with the SEC under the securities act of 1933, 15 U.S.C. § 77a et seq.
  - (ii) NASAA form U-2 consent to service of process signed by the issuer.
  - (iii) NASAA form NF uniform investment company notice filing form.
  - (iv) A nonrefundable filing fee of \$500.00.
- (b) After the initial offer of sale, if the issuer files an amendment to its registration statement with the SEC, the issuer shall file a copy of the amendment with the administrator.

**R 451.3.2 State securities registrations and notice filings.**

**Rule 3.2. (1)** Pursuant to section 302 of the act, MCL 451.2302, the administrator designates the EFD to be authorized pursuant to subrule (2) of this rule to receive and store securities registrations, exemptions, notice filings, and amendments and collect related fees on behalf of the administrator.

**(2)** Unless otherwise provided, upon notice under subrule (3) of this rule, filings and related fees shall be filed electronically with and transmitted to the EFD. This requirement may be waived by the administrator.

**(3)** Notwithstanding subrule (2) of this rule, the electronic filing of documents and the collection of related processing fees shall not be required until such time as the EFD provides for receipt of such filings and fees and 30 days' notice is provided by the administrator. Any documents or fees required to be filed with the administrator that are not permitted to be filed with, or cannot be accepted by, the EFD system shall be filed directly with the administrator, or the administrator's designee.

**(4)** A duly authorized person of the issuer shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to EDGAR. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

**R 451.3.3 Small corporate offering registration, SCOR.**

**Rule 3.3. (1)** This rule offers issuers an optional method of registration pursuant to the provisions of section 304 of the act, MCL 451.2304, for corporations or manager-managed limited liability companies issuing securities that are exempt from registration under the federal exemption, regulation D, 17 C.F.R. §230.504, or pursuant to the provisions of section 3(a)(11) of the securities act of 1933, 15 U.S.C. §77c(a)(11). Issuers eligible for this method of registration shall use Form U-7 as the disclosure document for the offering. This method of registration shall be known as SCOR, as defined in R 451.1.1(z).

**(2)** Both of the following provisions apply to SCOR applications:

**(a)** Applications shall be in compliance with the provisions of this rule; however, the provisions of this rule may be modified or waived by the administrator.

**(b)** Where individual characteristics of specific offerings warrant modification from the provisions of this rule, they shall be accommodated, insofar as possible, while still being consistent with the intent of this rule.

**(3)** All of the following provisions apply to the availability of SCOR:

**(a)** SCOR is intended to allow small corporations or manager-managed limited liability companies to conduct limited offerings of securities. SCOR uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the SCOR format and shall; therefore, be unable to utilize SCOR. SCOR shall not be utilized by the following issuers and programs unless written permission is obtained from the administrator based upon a showing that adequate disclosure can be made to investors using the SCOR format:

**(i)** Holding companies, companies that have a principal purpose of owning stock in, or supervising the management of, other companies.

**(ii)** Portfolio companies, such as real estate investment trusts.

**(iii)** Issuers with complex capital structures.

**(iv)** Commodity pools.

**(v)** Equipment leasing programs.

**(vi) Real estate programs.**

**(b) SCOR is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, all of the following requirements shall be met:**

**(i) The issuer shall be a corporation or manager-managed limited liability company that is organized under the laws of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia.**

**(ii) The issuer shall not engage in petroleum exploration or production or mining or other extractive industries.**

**(iii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.**

**(iv) The offering price for common stock or common ownership interests, collectively referred to as “common stock”; the exercise price if the securities offered are options, warrants, or rights for common stock; and the conversion price if the securities are convertible into common stock shall be equal to or more than \$5.00 per share.**

**(v) The aggregate offering price of the securities offered, within or outside this state, is not more than \$1,000,000.00, less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under federal exemption, regulation D, 17 C.F.R. §230.504, in reliance on any exemption pursuant to the provisions of section 3(a)(11) and (b) of the securities act of 1933, 15 U.S.C. §77c(a)(11) and (b) or in violation of section 5(a) of the securities act of 1933, 15 U.S.C. §77e(a).**

**(c) SCOR is not available to investment companies that are subject to the investment company act of 1940, 15 U.S.C. §80(a) et seq., or to issuers that are subject to the reporting requirements of section 13 or section 15(d) of the securities exchange act of 1934, 15 U.S.C. §78m and §78o(d).**

**(d) SCOR is available for registration of debt offerings only if the issuer can demonstrate a reasonable ability to service its debt.**

**(4) SCOR shall not be available for the securities of any issuer if any of the following provisions applies to that issuer or any of its officers, directors, 10% stockholders, unitholders, promoters, or any selling agents of the securities to be offered or any officer, director, or partner of such selling agent:**

**(a) The individual has filed a registration statement that is the subject of a current registration stop order entered pursuant to any federal or state securities law within 5 years before the filing of the SCOR application.**

**(b) The individual has been convicted, within 5 years before the filing of the SCOR application, of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following:**

**(i) Forgery.**

**(ii) Embezzlement.**

**(iii) Obtaining money under false pretenses.**

**(iv) Larceny.**

**(v) Conspiracy to defraud.**

**(c) The individual is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the SEC within 5 years before the filing of the SCOR application or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within 5 years before the filing of the SCOR registration application.**

**(d) The individual is subject to any federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.**

**(e) The individual is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily, or permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the SEC entered within 5 years before the filing of the SCOR application. However, the prohibition of this subdivision and subdivisions (a), (b) and (c) of this subrule shall not apply if the person who is subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer who employs the person is licensed or registered in this state and the form BD that is filed in this state discloses the order, conviction, judgment, or decree relating to the person. A person who is disqualified pursuant to the provisions of this subdivision shall not act in any capacity other than that for which the person is licensed or registered. Any disqualification pursuant to the provisions of this subdivision is automatically waived if the state securities administrator or other state or federal agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.**

**(5) By filing for SCOR in this state, the registrant agrees with the administrator that the registrant shall not split its common stock or declare a stock dividend for 2 years after the effectiveness of the registration without the prior written approval of the administrator.**

**(6) In addition to filing a properly completed form and filing fee required pursuant to the provisions of section 305(2) of the act, MCL 451.2305(2), an applicant for SCOR shall file all of the following exhibits with the administrator:**

- (a) The form of selling agency agreement.**
- (b) The issuer's articles of incorporation or other charter documents and all amendments to those documents.**
- (c) The issuer's bylaws or operating agreement, as amended to date.**
- (d) Copies of any resolutions by directors setting forth terms and provisions of capital stock or units to be issued.**
- (e) Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.**
- (f) A specimen of the security to be offered, including any legend restricting resale.**
- (g) Consent to service of process accompanied by an appropriate corporate resolution.**
- (h) Copies of all advertising or other material that is directed, or to be furnished, to investors in the offering.**
- (i) The form of escrow agreement for escrow of proceeds.**
- (j) Consent to inclusion in disclosure document of accountant's report.**
- (k) Consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences.**
- (l) Consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel.**
- (m) The form of any subscription agreement for the purchase of securities in the offering.**
- (n) An opinion of an attorney who is licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and, when issued**

upon payment of the offering price, shall be legally and validly issued, fully paid and nonassessable, and binding on the issuer pursuant to their terms.

- (o) A schedule of residential street addresses of officers, directors, and principal stockholders.
- (p) Additional information as the administrator requires by rule or order.

**R 451.3.4 Registration by qualification; prospectus.**

**Rule 3.4. (1) As a condition of registration by qualification, a prospectus containing the information and records specified in section 304(2) of the act, MCL 451.2304(2), shall be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of any of the following:**

**(a) The first offer made in a record to the person other than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made, or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.**

**(b) The confirmation of a sale made by or for the account of the person.**

**(c) Payment pursuant to the sale.**

**(d) Delivery of the security pursuant to the sale.**

**(2) If the prospectus, or any part of it, becomes misleading as to any material fact, or facts, or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, it shall be revised or supplemented, and the revision or supplementation shall be submitted to the administrator prior to use. A prospectus shall not be used if the administrator has informed the registrant of an objection to the prospectus.**

**(3) A prospectus shall not be used without revision or supplementation for more than 13 months from its first use.**

**(4) Every submitted prospectus shall carry the following legend displayed in a prominent manner: "THESE SECURITIES ARE OFFERED PURSUANT TO A REGISTRATION ORDER ISSUED BY THE STATE OF MICHIGAN. THE STATE OF MICHIGAN DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF ANY SECURITIES, NOR DOES IT PASS UPON THE TRUTH, MERITS, OR COMPLETENESS OF ANY PROSPECTUS OR ANY OTHER INFORMATION FILED WITH THIS STATE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."**

**R 451.3.5 Registration by qualification; reports and investigations.**

**Rule 3.5. (1) As a condition of registration by qualification, the administrator may require that a report by an accountant, engineer, appraiser or other professional person be filed, and may require that the estimated cost of such report be deposited in advance by the registrant in an escrow account.**

**(2) The administrator may designate an employee to investigate the books, records and affairs of any applicant for registration by qualification and may require the estimated cost of the investigation to be deposited in advance by the applicant in an escrow account.**

**(3) Unless waived by the administrator in writing, a registrant by qualification shall submit a complete audit report of the issuer covering the last fiscal year that is certified by an independent or certified public accountants.**

**R 451.3.6 Adoption by reference; statements of policy.**

**Rule 3.6. (1) Unless waived by the administrator, the administrator shall apply the applicable statement of policy adopted by NASAA when conducting a merit review to determine whether an offering is fair, just, and equitable.**

**(a) The following statements of policy are incorporated by reference in these rules and made a part of this rule as published by NASAA, 750 First Street, NE, Suite 1140, Washington, DC 20002, and is available for free online at <http://www.nasaa.org>, or from the Michigan department of licensing and regulatory affairs, corporations, securities, and commercial licensing bureau, P.O. Box 30018, Lansing, MI 48909 for a cost as prescribed in R 451.6.2:**

- (i) “Corporate Securities Definitions”, as amended by NASAA on March 31, 2008.**
  - (ii) “Loans and Other Material Affiliated Transactions”, as amended by NASAA on March 31, 2008.**
  - (iii) “Options and Warrants”, as amended by NASAA on March 31, 2008.**
  - (iv) “Preferred Stock”, as amended by NASAA on March 31, 2008.**
  - (v) “Promoter’s Equity Investment”, as amended by NASAA on March 31, 2008.**
  - (vi) “Promotional Shares”, as amended by NASAA on March 31, 2008.**
  - (vii) “Risk Disclosure Guidelines”, as adopted by NASAA on September 9, 2001.**
  - (viii) “Specificity in Use of Proceeds”, as amended by NASAA on March 31, 2008.**
  - (ix) “Underwriting Expenses, Underwriter’s Warrants, Selling Expenses and Selling Security Holders”, as amended by NASAA on March 31, 2008.**
  - (x) “Unsound Financial Condition”, as amended by NASAA on March 31, 2008.**
  - (xi) “Unequal Voting Rights”, as amended by NASAA on March 31, 2008.**
  - (xii) “Registration of Asset-Backed Securities”, as amended by NASAA on May 6, 2012.**
  - (xiii) “Mortgage Program Guidelines”, as amended by NASAA on May 7, 2007.**
  - (xiv) “Real Estate Programs”, as amended by NASAA on May 7, 2007.**
  - (xv) “Real Estate Investment Trusts”, as amended by NASAA on May 7, 2007.**
  - (xvi) “Registration of Oil and Gas Programs”, as amended by NASAA on May 6, 2012.**
  - (xvii) “Equipment Programs”, as amended by NASAA on May 6, 2012.**
  - (xviii) “Commodity Pool Programs”, as amended by NASAA on May 6, 2012.**
  - (xix) “Cattle-Feeding Programs”, as adopted by NASAA on September 17, 1980.**
  - (xx) “Omnibus Guidelines”, as amended by NASAA on May 7, 2007.**
  - (xxi) “Viatical Investment Guidelines”, as adopted by NASAA on October 1, 2002.**
- (b) The “Omnibus Guidelines” shall be applied to limited partnerships programs or other entities in which more specific statements of policy have not been adopted by NASAA.**

**(2) If requested by the administrator, a registration statement to register securities shall include a cross-reference table to indicate compliance with, or deviation from, the applicable statement of policy.**

**(3) In establishing standards of fairness and equity, the administrator has established the following investor suitability recommendations for direct participation programs registered under the act:**

**(a) A gross income of \$70,000.00 and a net worth of \$70,000.00, exclusive of home, home furnishings, and automobiles, or a net worth of \$250,000.00, exclusive of home, home furnishings, and automobiles.**

**(b) No more than 10% of any 1 Michigan investor’s liquid net worth shall be invested in the securities being registered with the administrator.**

**(4) Higher or lower suitability standards may be established or may be required by the administrator as a condition of registration.**

**(5) The suitability standards shall be disclosed in the prospectus.**

**PART 4. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS**

**R 451.4.1 Broker-dealer; Canadian exemption.**

**Rule 4.1. (1) A broker-dealer that is registered as a broker-dealer in Canada and that does not have a place of business in this state may effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:**

**(a) An individual from Canada who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.**

**(b) An individual from Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan of which the individual is the holder or contributor in Canada.**

**(c) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently a resident in Canada.**

**(2) An agent who represents a broker-dealer that is exempt under subrule (1)(a) of this rule, may effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in subrule (1)(a) of this rule.**

**R 451.4.2 Merger and acquisition broker exemption.**

**Rule 4.2. (1) The following definitions apply for purposes of this rule:**

**(a) “Control” means the power to directly or indirectly direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for a person who meets any of the following:**

**(i) Is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility, or has similar status or functions.**

**(ii) Has the right to vote 20% or more of a class of voting securities or the power to sell or direct the sale of 20% or more of a class of voting securities.**

**(iii) In the case of a partnership or limited liability company, has the right upon dissolution to receive, or has contributed, 20% or more of the capital.**

**(b) “Eligible privately held company” means a company meeting both of the following conditions:**

**(i) The company does not have any class of securities registered or required to be registered with the SEC pursuant to section 12 of the securities exchange act of 1934, 15 U.S.C. 78o(b); or, with respect to which the company files, or is required to file, periodic information, documents, and reports pursuant to section 15(d) of the securities exchange act of 1934, 15 U.S.C. 78o(d).**

**(ii) In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions:**

**(A) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.00.**

**(B) The gross revenues of the company are less than \$250,000,000.00.**

**(c) “Merger and acquisition broker” means a broker and a person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase or redemption of,**

or, a business combination involving securities or assets of the eligible privately held company if both of the following are true:

(i) If the merger and acquisition broker reasonably believes that upon consummation of the transaction, all persons acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company.

(ii) If a person is offered securities in exchange for securities or assets of the eligible privately held company, then before becoming legally bound to consummate the transaction, the person will receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and, information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(d) “Public shell company” is a company that at the time of a transaction with an eligible privately held company meets all of the following:

(i) Has any class of securities registered or required to be registered with the SEC pursuant to section 12 of the securities exchange act of 1934, 15 U.S.C. 78o(b); or, with respect to which the company files or is required to file periodic information, documents, and reports pursuant to section 15(d) of the securities exchange act of 1934, 15 U.S.C. 78o(d).

(ii) Has no or nominal operations.

(iii) Has no or nominal assets; assets consisting solely of cash and cash equivalents; or, assets consisting of any amount of cash and cash equivalents and nominal other assets.

(2) A merger and acquisition broker shall be exempt from registration as a broker-dealer pursuant to section 401 of the act, MCL 451.2401, except as provided in subrules (3) and (4) of this rule.

(3) A merger and acquisition broker is not exempt from registration pursuant to this rule if the merger and acquisition broker does any of the following:

(a) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(b) Engages on behalf of an issuer in a public offering of any class of securities that is registered or required to be registered with the SEC pursuant to section 12 of the securities exchange act of 1934, 15 U.S.C. 78o(b); or, with respect to which the issuer files or is required to file periodic information, documents, and reports pursuant to section 15(d) of the securities exchange act of 1934, 15 U.S.C. 78o(d).

(c) Engages on behalf of any party in a transaction involving a public shell company.

(4) A merger and acquisition broker is not exempt from registration pursuant to this paragraph if the merger and acquisition broker is subject to any of the following:

(a) Suspension or revocation of registration pursuant to section 15(b) of the securities exchange act of 1934, 15 U.S.C. 78o(b)(4).

(b) A statutory disqualification described in section 3(a)(39) of the securities exchange act of 1934, 15 U.S.C. 78c(a)(39).

(c) A disqualification as described in SEC rule 506(d) of SEC regulation D, 17 C.F.R. §230.506(d).

(d) A final order described in paragraph (4)(H) of section 15(b) of the securities exchange act of 1934, 15 U.S.C. 78o(b)(4)(H).

(5) Nothing in this rule shall be construed to limit the authority of the administrator to exempt a person or class of persons from the provisions of the act or rules or orders promulgated pursuant to the act.

(6) On the date that is 5 years after the date of the enactment of this rule, and every 5 years after that date, each dollar amount in subrule (1)(b)(ii) may be adjusted pursuant to all of the following:

(a) Dividing the annual value of the Detroit consumer price index for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index for the calendar year ending December 31, 2012. As used in this subrule, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the Bureau of Labor Statistics of the United States Department of Labor.

(b) Multiplying such dollar amount by the quotient obtained pursuant to subdivision (a) of this subrule.

(c) Each dollar amount determined pursuant to this subrule shall be rounded to the nearest multiple of \$100,000.00.

#### **R 451.4.3 Electronic filing; designated entities.**

**Rule 4.3. (1) The administrator designates both of the following:**

(a) The CRD to receive and store filings and collect fees from broker-dealers and agents representing broker-dealers on behalf of the administrator.

(b) The IARD to receive and store filings and collect fees from investment advisers, investment adviser representatives, and federal covered investment advisers on behalf of the administrator.

(2) Unless otherwise provided, all applications, amendments, reports, notices, related filings, and fees required to be filed with the administrator pursuant to the act or rules adopted under the act, shall be filed electronically with and transmitted to 1 of the following:

(a) The CRD, when the filing is required for the registration of a broker-dealer or agent representing a broker-dealer.

(b) The IARD, when the filing is required for the registration of an investment adviser or investment adviser representative.

(3) When a signature, or signatures, are required by the particular instructions of any filing to be made electronically through the CRD or the IARD, the applicant or a duly authorized officer of the applicant, as required, shall affix his or her electronic signature to the applicable form by typing his or her name in the appropriate fields and submitting the filing electronically to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

(4) Solely for purposes of document submissions made electronically through the CRD or the IARD, a document is considered filed with the administrator when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(5) Any documents or fees required to be filed with the administrator that are not permitted to be filed with, or cannot be accepted electronically by the CRD or the IARD, shall be filed directly with the administrator.

#### **R 451.4.4 Electronic signatures.**

**Rule 4.4. (1) As used in this rule "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic**

records or performances, in whole or in part, without review or action by an individual at the time of the action or response.

(2) Electronic signatures may be used or accepted, or both, for investment securities if the legal effect, validity, or enforceability of contracts or other records are consistent with ESIGN.

(3) This rule does not require a record or signature be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(4) This rule applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct transactions by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(5) If a party agrees to conduct a transaction by electronic means, this rule does not prohibit the party from refusing to conduct other transactions by electronic means. This subrule may not be modified by agreement.

(6) Whether an electronic record or electronic signature has legal effect is determined by this rule and other applicable law.

(7) A signature may not be denied legal effect solely because the record or signature is in electronic form.

(8) A contract may not be denied legal effect solely because an electronic record was used in the contract's formation.

(9) If a law requires a record to be in writing, an electronic record satisfies the law.

(10) If a law requires a signature, an electronic signature satisfies the law.

(11) If parties have agreed to conduct transactions by electronic means, and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender, or the sender's information processing system, inhibits the ability of the recipient to print or store the electronic record.

(12) If a sender's information processing system inhibits the ability of a recipient to print or store an electronic record, the electronic record is not enforceable against the recipient.

(13) An electronic record, or electronic signature, is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record, or electronic signature, was attributable.

(14) The effect of an electronic record, or electronic signature, attributed to a person is determined from the context and surrounding circumstances at the time of the record's or signature's creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

(15) If a change or error in an electronic record occurs in a transmission between parties to a transaction, both of the following apply:

(a) If the parties have agreed to use a security procedure to detect changes or errors, and 1 party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention

or correction of the error and, at the time the individual learns of the error, the individual does all of the following:

(i) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(ii) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

(iii) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(16) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that does both of the following:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

(b) Remains accessible for later reference.

(17) If a law requires a record to be presented or retained in the record's original form, or provides consequences if the record is not presented or retained in the record's original form, that law is satisfied by an electronic record retained in accordance with subrule (16) of this rule.

(18) In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

(19) In an automated transaction, all of the following apply:

(a) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows, or has reason to know, shall cause the electronic agent to complete the transaction or performance.

(b) The terms of the contract are determined by the substantive law applicable to the contract.

(20) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when the record meets all of the following:

(a) Is addressed properly, or otherwise directed properly, to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent, and from which the recipient is able to retrieve the electronic record.

(b) Is in a form capable of being processed by that system.

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(21) Unless otherwise agreed between a sender and the recipient, an electronic record is received when both of the following apply:

(a) The record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records, or information of the type sent, and from which the recipient is able to retrieve the electronic record.

(b) The record is in a form capable of being processed by that system.

(22) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business.

(23) If the sender or recipient has more than 1 place of business, the place of business of that person is the place having the closest relationship to the underlying transaction. If the sender or

the recipient does not have a place of business, the place of business is the sender's or recipient's residence.

(24) Receipt of an electronic acknowledgment from an information processing system establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

#### **R 451.4.5 Registration exemption for investment advisers to private funds.**

**Rule 4.5. (1) As used in this rule, “venture capital fund” means a private fund that meets the definition of a venture capital fund in SEC rule 203(l)-1, 17 C.F.R. §275.203(l)-1.**

**(2) Subject to the additional requirements of subrule (3) of this rule, a private fund adviser formed or domiciled in this state, and private fund advisers not domiciled in this state but offered to Michigan residents, shall be exempt from the registration requirements of section 403 of the act, MCL 451.2403, if the private fund adviser satisfies both of the following conditions:**

**(a) Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in SEC rule 506(d)(1) of SEC regulation D, 17 C.F.R. §230.506(d)(1).**

**(b) The private fund adviser files with the state each report, and amendments to each report if applicable, that an exempt reporting adviser is required to file with the SEC pursuant to SEC rule 204-4, 17 C.F.R. §275.204-4.**

**(3) In order to qualify for the exemption described in subrule (2) of this rule, a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund, shall, in addition to satisfying each of the conditions specified in subrule (2) of this rule, comply with all of the following requirements:**

**(a) The private fund adviser shall advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities, other than short-term paper, are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC rule 205-3, 17 C.F.R. §275.205-3, at the time the securities are purchased from the issuer. The value of primary residence shall be calculated as the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.**

**(b) At the time of the purchase, the private fund adviser shall disclose all of the following in writing, to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:**

**(i) All services, if any, to be provided to individual beneficial owners.**

**(ii) All duties, if any, the investment adviser owes to the beneficial owners.**

**(iii) Any other material information affecting the rights or responsibilities of the beneficial owners.**

**(c) The private fund adviser shall obtain, on an annual basis, audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.**

**(4) If a private fund adviser is registered with the SEC, the investment adviser shall not be eligible for the exemption in subrule (2) of this rule, and shall comply with the state notice filing requirements applicable to federal covered investment advisers in section 405 of the act, MCL 451.2405.**

**(5) A person is exempt from the registration requirements of section 404 of the act, MCL 451.2404, if he or she is employed by, or associated with, an investment adviser that is exempt from registration in this state pursuant to this rule and does not otherwise act as an investment adviser representative.**

**(6) The report filings described in subrule (2)(b) of this rule shall be made electronically through the IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.**

**(7) An investment adviser who becomes ineligible for the exemption provided by this rule shall comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser's eligibility for this exemption ceases.**

**(8) An investment adviser to a 3(c)(1) fund, other than a venture capital fund, that has 1 or more beneficial owners who are not qualified clients as described in subrule (3)(a) of this rule is eligible for the exemption contained in subrule (2) of this rule, if all of the following conditions are satisfied:**

**(a) The subject fund existed prior to the effective date of this regulation.**

**(b) As of the effective date of this rule, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subrule (3)(a) of this rule.**

**(c) The investment adviser discloses, in writing, the information described in subrule (3)(b) of this rule to all beneficial owners of the fund.**

**(d) As of the effective date of this rule, the investment adviser delivers audited financial statements as required by subrule (3)(c) of this rule.**

**(9) Subrule (3)(a) of this rule shall not apply upon a showing of good cause and without prejudice to any other action of the administrator, if the administrator determines that it is not necessary under the circumstances that an exemption be denied.**

#### **R 451.4.6 Notice filing requirements for federal covered investment advisers.**

**Rule 4.6. (1) Pursuant to section 405 of the act, MCL 451.2405, the notice filing for a federal covered investment adviser shall be filed electronically with IARD on an executed Form ADV. A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by section 410(5) of the act, MCL 451.2410(5), and the Form ADV are filed electronically with and accepted by IARD on behalf of this state.**

**(2) Pursuant to section 405 of the act, MCL 451.2405, the annual renewal of the notice filing for a federal covered investment adviser shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by section 410(5) of the act, MCL 451.2410(5), is filed with and accepted by IARD on behalf of the state.**

**(3) A federal covered investment adviser shall file electronically with IARD, pursuant to the instructions in the Form ADV, any amendments to the federal covered investment adviser's Form ADV.**

#### **R 451.4.7 Application for registration by broker-dealers and agents representing broker-dealers.**

**Rule 4.7. (1) The application for initial registration of a broker-dealer pursuant to section 406 of the act, MCL 451.2406, shall be made by completing Form BD pursuant to the form's instructions and by filing the form electronically with CRD. The application for initial registration shall also include both of the following:**

**(a) Proof of compliance by the broker-dealer with the examination requirements of R 451.4.9.**

**(b) The fee required by section 410 of the act, MCL 451.2410.**

**(2) Pursuant to section 406 of the act, MCL 451.2406, the application for initial registration of agents representing a broker-dealer shall be made by completing Form U4 pursuant to the form's instructions and by filing the form electronically with CRD, except that a paper filing may be**

accepted by the administrator for an agent who is associated solely with an issuer. The application for initial registration shall also include both of the following:

- (a) Proof of compliance by the agent representing a broker-dealer with the examination requirements of R 451.4.9.
- (b) The fee required by section 410 of the act, MCL 451.2410.
- (3) To renew a registration as a broker-dealer, or an agent representing a broker-dealer, the registrant shall submit to CRD the fee required by section 410 of the act, MCL 451.2410.
- (4) A broker-dealer shall, within 30 days of any event requiring an amendment, file electronically with CRD any amendments to the broker-dealer's Form BD pursuant to the form's instructions.
- (5) An agent representing a broker-dealer shall, within 30 days of any event requiring an amendment, file electronically with CRD any amendments to the agent's Form U-4 pursuant to the form's instructions.
- (6) An application for initial or renewal registration is not considered filed for purposes of section 406 of the act, MCL 451.2406, until the required fee and all required documents have been filed with the administrator.

**R 451.4.8 Application for registration of Michigan investment market.**

**Rule 4.8.** In addition to the requirements of section 455 of the act, MCL 451.2455, an application for registration of a Michigan investment market shall include all of the following:

- (a) The applicant's primary street address.
- (b) The name, title, and telephone number of a contact employee.
- (c) The name and address of counsel for the applicant.
- (d) The date the applicant's fiscal year ends.
- (e) The applicant's form of incorporation or organization, for example, corporation, limited liability company, or partnership; and, a certificate of good standing from the jurisdiction in which the applicant is incorporated or organized.
- (f) A copy of the constitution, articles of incorporation or organization with all subsequent amendments and existing bylaws.
- (g) A copy of the corresponding rules of the Michigan investment market.
- (h) A copy of all written rulings, settled practices having the effect of rules, and interpretations of the governing board or other committee of the applicant in respect of any provisions of the constitution, bylaws, rules, or trading practices of the applicant which are not included in subdivision (g) of this rule.
- (i) Proof of compliance with sections 5, 6, and 15 of the securities exchange act of 1934, 15 U.S.C. §78a, et seq., such as an SEC no-action letter.
- (j) For each subsidiary or affiliate of the applicant, and for any entity with whom the applicant has contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions on the Michigan investment market, all of the following shall be submitted:
  - (i) Name and address of organization.
  - (ii) Form of organization, for example, corporation, limited liability company, or limited partnership.
  - (iii) Name of the state in which the organization was formed, and the date of formation.
  - (iv) Brief description of the nature and extent of the affiliation.
  - (v) Brief description of the business or functions. The description should include responsibilities with respect to operation of the Michigan investment market, the execution, reporting, clearance,

**or settlement of transactions in connection with operation of the Michigan investment market, or both.**

**(vi) A copy of the constitution.**

**(vii) A copy of the articles of incorporation or organization, including all amendments.**

**(viii) A copy of existing bylaws or corresponding rules or instruments.**

**(ix) The name and title of the present officers, governors, members of all standing committees, or persons performing similar functions.**

**(x) An indication of whether such business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.**

**(k) For each subsidiary or affiliate of the Michigan investment market, provide unconsolidated financial statements for the latest fiscal year. Such financial statements shall consist, at a minimum, of a balance sheet and an income statement of such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. If an affiliate or subsidiary is required by another rule to submit annual financial statements, a statement to that effect, with a citation to the other rule, may be provided instead of the financial statements required in this subdivision.**

**(l) A description of the manner of operation of the Michigan investment market. The description shall include all of the following:**

**(i) The means of access to the Michigan investment market.**

**(ii) Procedures governing entry and display of quotations and orders in the Michigan investment market.**

**(iii) Procedures governing the execution, reporting, clearance, and settlement of transactions in connection with the Michigan investment market.**

**(iv) Proposed fees.**

**(v) Procedures for ensuring compliance with the Michigan investment market usage guidelines.**

**(vi) The hours of operation of the Michigan investment market, and the date on which the applicant intends to commence the operation.**

**(vii) A copy of the users' manual.**

**(viii) If the applicant proposes to hold funds or securities on a regular basis, the applicant shall provide a description of the controls that will be implemented to ensure safety of those funds or securities.**

**(m) A complete set of forms pertaining to all of the following:**

**(i) Application for membership, participation, or subscription to the entity.**

**(ii) Application for approval as a person associated with a user, participant, or subscriber of the entity.**

**(iii) Any other similar materials.**

**(n) A complete set of forms of financial statements, reports, or questionnaires required of members, participants, subscribers, or any other users relating to financial responsibility or minimum capital requirements for such members, participants, or any other users.**

**(o) A complete set of documents comprising the applicant's listing applications, including any agreements required to be executed in connection with listing and a schedule of listing fees. If the applicant does not list securities, the applicant shall provide a brief description of the criteria used to determine what securities may be traded on the exchange.**

**(p) For the latest fiscal year of the applicant, audited financial statements that are prepared pursuant to, or in the case of a foreign applicant, reconciled with, United States generally accepted accounting principles, and are covered by a report prepared by an independent public accountant.**

**If an applicant has no consolidated subsidiaries, the applicant shall file audited financial statements alone and need not file a separate unaudited financial statement for the applicant.**

**(q) A list of the officers, governors, members of all standing committees, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year indicating the following for each:**

**(i) Name.**

**(ii) Title.**

**(iii) Dates of commencement and termination of terms of office or position.**

**(iv) Type of business in which each is primarily engaged, for example, floor broker, specialist, and odd lot dealer.**

**(r) A description of the Michigan investment market's criteria for membership, including a description of conditions under which users may be subject to suspension or termination with regard to access to the Michigan investment market, and a description of any procedures that will be involved in the suspension or termination of a user.**

**(s) An alphabetical list of all members, participants, subscribers, or other users, including all of the following information:**

**(i) Name.**

**(ii) Date of election to membership or acceptance as a participant, subscriber, or other user.**

**(iii) Principal business address and telephone number.**

**(iv) If a member, participant, subscriber, or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity, for example, partner, officer, director, and employee.**

**(t) A description of the type of activities primarily engaged in by the member, participant, subscriber, or other user. A person shall be "primarily engaged" in an activity or function for purposes of this subdivision when that activity or function is the one in which that person is engaged for the majority of that person's time.**

**(u) The class of membership, participation, or subscription or other access.**

**(v) A schedule for the securities listed in the Michigan investment market, indicating for each, the name of the issuer and a description of the security.**

#### **R 451.4.9 Broker-dealer and agents representing broker-dealers examination requirements.**

**Rule 4.9. (1) Unless waived by the administrator, a natural person applicant for initial registration as a broker-dealer or agent shall take and pass, within 2 years immediately preceding the filing date of the application, and as reflected on the records of CRD, both of the following:**

**(a) Either the uniform securities agent state law examination (S63) or the uniform combined state law examination (S66).**

**(b) The general securities business examination set forth in paragraph (i) of this subdivision, unless the applicant's proposed securities activities will be restricted, in which case the applicant shall be required to take and pass each examination in paragraphs (ii) to (viii) of this subdivision that relates to the applicant's proposed securities activities:**

**(i) The general securities representative examination (S7).**

**(ii) The investment company products/variable contracts representative examination (S6).**

**(iii) The direct participation programs representative examination (S22).**

**(iv) The municipal securities representative examination (S52).**

**(v) The corporate securities limited representative examination (S62).**

**(vi) The registered options representative examination (S42).**

**(vii) The government securities representative examination (S72).**

**(viii) The private placement representative examination (S82).**

**R 451.4.10 Application for investment adviser registration.**

**Rule 4.10. (1) The application for initial registration as an investment adviser pursuant to section 406 of the act, MCL 451.2406, shall be made by completing Form ADV pursuant to the form instructions and by filing the form electronically with IARD. The application for initial registration shall also include all of the following:**

**(a) Proof of compliance by the investment adviser with the examination requirements of R 451.4.12.**

**(b) A copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, a balance sheet prepared as set forth in R 451.4.17.**

**(c) A copy of the surety bond required by R 451.4.14, if applicable and requested by the administrator.**

**(d) The fee required by section 410 of the act, MCL 451.2410.**

**(2) The administrator may accept a copy of part 2 of Form ADV as filed electronically with IARD.**

**(3) The application for annual renewal registration as an investment adviser shall be filed electronically with IARD. The application for annual renewal registration shall include both of the following:**

**(a) The fee required by section 410 of the act, MCL 451.2410.**

**(b) A copy of the surety bond required by R 451.4.14, if applicable, or if requested by the administrator.**

**(4) An investment adviser shall, within 30 days of any event requiring an amendment, file electronically with IARD, pursuant to the instructions in the Form ADV, any amendments to the investment adviser's Form ADV.**

**(5) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser shall file electronically with IARD an annual updating amendment to the Form ADV.**

**(6) An application for initial or renewal registration is not considered filed for purposes of section 406 of the act, MCL 451.2406, until the required fee and all required documents have been received by the administrator.**

**R 451.4.11 Application for investment adviser representative registration.**

**Rule 4.11. (1) Pursuant to section 406 of the act, MCL 451.2406, the application for initial registration as an investment adviser representative shall be made by completing Form U4 pursuant to the form instructions and by filing the Form U4 electronically with IARD. The application for initial registration shall also include both of the following:**

**(a) Proof of compliance by the investment adviser representative with the examination requirements of R 451.4.12.**

**(b) The fee required by section 410 of the act, MCL 451.2410.**

**(2) The application for annual renewal registration as an investment adviser representative shall be filed electronically with IARD. The application for annual renewal registration shall include the fee required by section 406 of the act, MCL 451.2406.**

**(3) The investment adviser representative is under a continued obligation to update information required by Form U4 as changes occur.**

(4) An investment adviser representative and the investment adviser shall, within 30 days of any event requiring an amendment, file electronically with IARD any amendments to the representative's Form U4.

(5) An application for initial or renewal registration is not considered filed for purposes of section 406 of the act, MCL 451.2406, until the required fee and all required documents have been received by the administrator.

**R 451.4.12 Investment adviser and investment adviser representative examination requirements.**

**Rule 4.12.** (1) Unless otherwise waived by the administrator, a natural person investment adviser or investment adviser representative shall take and pass within 2 years immediately preceding the date of the application, as reflected on the records of IARD, either of the following:

(a) The uniform investment adviser state law examination (S65).

(b) The uniform combined state law examination (S66) and the general securities representative examination (S7).

(2) Any person who has been registered as an investment adviser or an investment adviser representative in any state that requires the licensing, registration, or qualification of investment advisers or investment adviser representatives within the 2 years immediately preceding the date of filing an application shall not be required to comply with the examination requirement in subrule (1) of this rule.

(3) Compliance with subrules (1) and (2) of this rule is waived if the applicant has been awarded any of the following designations and at the time of filing an application the designation is current and in good standing:

(a) Certified financial planner awarded by the certified financial planners board of standards.

(b) Chartered financial consultant or masters of science and financial services awarded by the American College, in Bryn Mawr, Pennsylvania.

(c) Chartered financial analyst awarded by the Institute of Chartered Financial Analysts.

(d) Personal financial specialists awarded by the American Institute of Certified Public Accountants.

(e) Chartered investment counselor awarded by the Investment Adviser Association.

(4) An applicant who has taken and passed the uniform investment adviser law examination (S65) within 2 years immediately preceding the date the application is filed with the administrator, or at any time if the applicant has been registered or licensed as an investment adviser or investment adviser representative within the 2 years immediately preceding the date the application is filed with the administrator, shall not be required to take and pass the uniform investment adviser law examination again.

(5) An applicant who is an agent for a broker-dealer and an investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative, but who has previously met the examination requirement in subrule (1) of this rule necessary to provide advisory services on behalf of the broker-dealer or the investment adviser, shall not be required to again take and pass the exams in subrule (1) of this rule.

**R 451.4.13 Custody prohibitions, limits, and conditions.**

**Rule 4.13.** (1) For purposes of this rule, the following definitions apply:

(a) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. "Custody" includes, but is not limited to, the following circumstances:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within 3 business days of receiving the funds or securities.

(ii) Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian.

(iii) Any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle.

(b) "Custody" does not include the receipt of checks drawn by clients and made payable to unrelated third parties and shall not meet the definition of custody if forwarded to the third party within 24 hours of receipt.

(2) It shall be unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser who is registered or required to be registered to have custody of client funds or securities unless both of the following are true:

(a) The investment adviser maintains custody or possession pursuant to the requirements set forth in SEC rule 206(4)-2, 17 C.F.R. §275.206(4)-2.

(b) All items required to be filed with the SEC under SEC rule 206(4)-2, 17 C.F.R. §275.206(4)-2, are filed, through the IARD System, with the administrator.

(3) Investment advisers who are registered, or required to be registered, may have custody or possession of securities or funds of a client if the investment adviser is otherwise permitted by rule or order of the administrator to maintain custody or possession of client funds or securities and complies with such rule or order.

#### **R 451.4.14 Bonding requirement for certain investment advisers.**

**Rule 4.14.** (1) For purposes of this rule, "custody" is defined in R 451.4.13(1)(a) and (b).

(2) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence. Both of the following apply:

(a) Every investment adviser registered or required to be registered under the act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser.

(b) Every investment adviser registered or required to be registered under the act who has custody or discretion of client funds or securities who does not meet the minimum net worth standard in R451.4.16 shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000.00.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subrule (2)(a) of this rule, provided that the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

#### **R 451.4.15 Minimum financial requirements for broker-dealers.**

**Rule 4.15.** (1) A broker-dealer registered or required to be registered under the act, shall maintain net capital in such minimum amounts as are designated in SEC rule 15c3-1, 17 C.F.R.

**§240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o, for the activities the broker-dealer shall engage in this state.**

**(2) The aggregate indebtedness of a broker-dealer to all other persons shall not exceed the levels prescribed under SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o.**

**(3) If a broker-dealer is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement. The amount so segregated shall be utilized solely for the business for which the broker-dealer or Michigan investment market is registered.**

**R 451.4.16 Minimum financial requirements for Michigan investment markets.**

**Rule 4.16. (1) A Michigan investment market, registered or required to be registered under the act, shall maintain net capital in such minimum amounts as are designated in SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o, for the activities the Michigan investment market shall engage in this state.**

**(2) The aggregate indebtedness of a Michigan investment market to all other persons shall not exceed the levels prescribed under SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o.**

**(3) If a Michigan investment market is an individual, the person shall segregate from personal capital, an amount sufficient to satisfy the net capital requirement. -The amount so segregated shall be utilized solely for the business for which the Michigan investment market is registered.**

**R 451.4.17 Minimum financial requirements for investment advisers.**

**Rule 4.17. (1) For purposes of this rule “net worth” means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets any of the following: prepaid expenses, except as to items properly classified assets under generally accepted accounting principles; deferred charges; goodwill; franchise rights; organizational expenses; patents; copyrights; marketing rights; unamortized debt discount and expense; all other assets of intangible nature; home; home furnishings; an automobile or automobiles; any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and, advances or loans to partners in the case of a partnership.**

**(2) An investment adviser registered, or required to be registered, under the act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000.00 except for the following circumstances:**

**(a) An investment adviser having custody solely due to direct fee deduction and complying with the terms described under R 451.4.13 and related books and records, as described in R 451.4.23, shall not be required to comply with the net worth or bonding requirements of this rule.**

**(b) An investment adviser having custody solely due to advising pooled investment vehicles and complying with the terms described under R 451.4.13 and related books and records, as described in R 451.4.23, shall not be required to comply with the net worth or bonding requirements of this rule.**

**(3) An investment adviser, registered or required to be registered, under the act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.00.**

(4) An investment adviser registered, or required to be registered, under the act who accepts prepayment of more than \$500.00 per client and 6 or more months in advance shall maintain at all times a positive net worth.

(5) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered, or required to be registered, under the act shall by the close of business on the next business day notify the administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of its financial condition, including all of the following:

(a) A trial balance of all ledger accounts.

(b) A statement of all client funds or securities which are not segregated.

(c) A computation of the aggregate amount of client ledger debit balances.

(d) A statement as to the number of client accounts.

(6) An investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if all of the following have occurred:

(a) The investment adviser has executed with its client a separate investment adviser contract that acknowledges that a third party trading agreement shall be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account.

(b) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(c) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(7) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

(8) An investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's minimum capital requirements.

#### **R 451.4.18 Financial statements.**

**Rule 4.18.** (1) Subject to subrule (4) of this rule, financial statements, when they are required to be filed with the administrator pursuant to the act, an administrative rule, or order of the administrator, shall consist of a balance sheet, a statement of cash flows, an income statement, and a statement of all shareholders or members equity.

(2) Subject to subrule (4) of this rule, any financial statements required to be filed with the administrator pursuant to any provision of the act, administrative rule, or order of the administrator, shall be prepared in accordance with generally accepted accounting principles.

(3) Financial statements shall be prepared on a consolidated basis unless otherwise required by the administrator or his or her designee.

(4) A filer of financial statements may request in writing to be exempt from the requirements of subrules (1), (2), and (3) of this rule. The administrator, upon good cause shown in a request made pursuant to this subrule, may issue an order exempting a filer from the requirements of subrules (1), (2), and (3) of this rule.

(5) The administrator may in its discretion require a filer of financial statements to submit financial statements that have been audited by an independent certified public accountant who shall also issue an opinion on the financial statements.

**R 451.4.19 Investment adviser brochure.**

**Rule 4.19.** (1) Unless otherwise provided in this rule, an investment adviser that is registered, or required to be registered, pursuant to section 403 of the act, MCL 451.2403, shall, pursuant to the provisions of this subrule, furnish each advisory client and prospective advisory client with the following:

(a) A brochure which may be a copy of part 2A of its Form ADV or written documents containing the information required by part 2A of Form ADV; a copy of its part 2B brochure supplement for each individual providing investment advice and having direct contact with clients in this state, or exercising discretion over assets of clients in this state, even if no direct contact is involved; a copy of its part 2A appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account; a summary of material changes, which may be included in part 2 of Form ADV or given as a separate document; and such other information as the administrator may require.

(b) The brochure shall comply with the language, organizational format, and filing requirements specified in the instructions to part 2 of Form ADV.

(2) An investment adviser, except as provided in subrule (4) of this rule, shall deliver the part 2A brochure and any brochure supplements required by this rule to a prospective advisory client before or at the time an investment advisory contract with that client is formed.

(3) An investment adviser, except as provided in subrule (4) of this rule, shall do either of the following:

(a) Deliver, within 120 days of the end of its fiscal year, a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes.

(b) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. Advisers are not required to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery.

(4) Delivery of the brochure and related brochure supplements required by subrules (2) and (3) of this rule do not need to be made to any of the following:

(a) Clients who receive only impersonal advice and who pay less than \$500.00 in fees per year.

(b) An investment company registered under the investment company act of 1940, 15 U.S.C. §80(a) et seq.

(c) A business development company as defined in the investment company act of 1940, 15 U.S.C. §80(a) et seq., and whose advisory contract meets the requirements of section 15c of that act, 15 U.S.C. §80(a)-15c.

(5) Delivery of the brochure and related supplements may be made electronically if the investment adviser does all of the following:

(a) In the case of an initial delivery to a potential client, obtains verification that a readable copy of the brochure and supplements were received by the client.

(b) In the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically.

(c) Prepares the electronically delivered brochure and supplements in the format prescribed in subrule (1) of this rule and instructions to part 2 of Form ADV.

(d) Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form.

(e) Establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this rule.

(6) Nothing in this rule shall relieve any investment adviser from any obligation required under the act or a rule promulgated under the act or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

#### **R 451.4.20 Proxy voting.**

**Rule 4.20.** It is a fraudulent, deceptive, or manipulative act, for an investment adviser registered, or required to be registered, under section 406 of the act, MCL 451.2406, to exercise voting authority with respect to client securities, unless the adviser does all of the following:

(a) Adopts and implements written policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients, which procedures shall include how the investment adviser will address material conflicts that may arise between the investment adviser and its clients.

(b) Discloses to clients how they may obtain information from the investment adviser about how the investment adviser voted with respect to the client's securities.

(c) Describes to clients the investment adviser's proxy voting policies and procedures and, upon request, furnishes a copy of the policies and procedures to the requesting client.

#### **R 451.4.21 Business continuity and succession planning.**

**Rule 4.21.** An investment adviser shall establish, implement, and maintain written procedures relating to a business continuity and succession plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type or types of services provided, and the number of locations of the investment adviser. The plan shall provide for at least all of the following:

(a) The protection, backup, and recovery of books and records.

(b) Alternate means of communications with customers, key personnel, employees, vendors, service providers, third-party custodians, and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(c) Office relocation in the event of temporary or permanent loss of a principal place of business.

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

(e) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

#### **R 451.4.22 Records required to be maintained by broker-dealers.**

**Rule 4.22.** A broker-dealer registered, or required to be registered, under the act, shall make, maintain, and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. §240.17a-3, and SEC rule 17a-4, 17 C.F.R. §240.17a-4.

#### **R 451.4.23 Records required to be maintained by Michigan investment markets.**

**Rule 4.23.** A Michigan investment market registered or required to be registered under the act, shall make, maintain, and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. §240.17a-3, and SEC rule 17a-4, 17 C.F.R. §240.17a-4.

**R 451.4.24** Records to be maintained by investment advisers.

**Rule 4.24.** (1) For the purposes of this rule, "access person" means when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, a person who has access to nonpublic information regarding any client's purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund, and any person who is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic, and any partner, officer, or director of the investment adviser.

(2) Every investment adviser registered, or required to be registered, under the act shall make and keep true, accurate, and current all of the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.

(c) A record of each order given by the investment adviser for the purchase or sale of a security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of a modification or cancellation of any such order or instruction. The record shall do all of the following: show the terms and conditions of the order, instruction, modification, or cancellation; identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(d) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser.

(e) All bills or statements, or copies of, paid or unpaid, relating to the investment adviser's business.

(f) All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business.

(g) Copies of all written communications received and sent by the investment adviser relating to all of the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) Any receipt, disbursement, or delivery of funds or securities.

(iii) The placing or execution of any order to purchase or sell any security.

(iv) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(v) If the investment adviser sends a notice, circular, or other advertisement offering a report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent. If the notice, circular, or

advertisement is distributed to persons named on a list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

(h) A list or other record of all accounts that identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of a client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by a client to the investment adviser.

(j) A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(k) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser directly or indirectly circulates or distributes to 10 or more persons, other than persons connected with the investment adviser. If the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation shall be kept.

(l) A record of every transaction in a security in which the investment adviser or any access person of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record shall state the title and amount of the security involved; the date and nature of the transaction, for example the purchase, sale, or other acquisition or disposition; the price at which it was effected; and, the name of the broker-dealer or bank with or through whom the transaction was effected.

(m) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(n) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(o) A record shall not be required for either transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or for transactions in securities that are direct obligations of the United States.

(p) An investment adviser shall not be deemed to have violated the provisions of this subdivision because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(q) Notwithstanding the provisions of subdivision (l) of this subrule, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any access person of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record shall state all of the following:

(i) The title and amount of the security involved.

(ii) The date and nature of the transaction, for example purchase, sale, or other acquisition or disposition.

(iii) The price at which it was effected.

(iv) The name of the broker-dealer or bank with or through whom the transaction was effected.

(v) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(vi) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(vii) A record shall not be required for either of the following:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control.

(B) Transactions in securities that are direct obligations of the United States.

(viii) An investment adviser shall be deemed to be “primarily engaged in a business or businesses other than advising investment advisory clients” if, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50% of total sales and revenues, and more than 50% of income or loss before income taxes and extraordinary items, from other business or businesses that did not primarily involve the giving of investment advice.

(ix) An investment adviser shall not be deemed to have violated the provisions of this subdivision because of the failure to record securities transactions of an advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(r) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser pursuant to the provisions of R 451.4.18; summary of material changes that is required by part 2 of Form ADV but is not contained in the written statement; and a record of the dates that each written statement, including an amendment or revision to the written statement, and a summary of material changes was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(s) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes to 2 or more persons, other than persons connected with the investment adviser. With respect to the performance of managed accounts only, the retention of all account statements, reflecting all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts is deemed to satisfy the requirements of this paragraph.

(t) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or an investment adviser's representative or employee and regarding any customer or client complaint.

(u) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(v) Written procedures regarding the supervision of employees and investment adviser representatives that are reasonably designed to achieve compliance with the act and rules promulgated under the act, and federal laws and rules.

(w) A copy of each document, other than any notices of general dissemination, that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

**(x) A record with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to the disclosure reporting pages.**

**(y) If an investment adviser inadvertently holds or obtains a client's securities or funds and returns them within 3 business days, the investment adviser shall keep a copy of each such financial instrument and a ledger or other listing of all securities or funds received, including all of the following information:**

**(i) Issuer, payor, or maker, as may be applicable.**

**(ii) Type of security and series.**

**(iii) Date of issue.**

**(iv) For debt instruments, the denomination, interest rate, and maturity date.**

**(v) Certificate number, including alphabetical prefix or suffix.**

**(vi) Name in which registered.**

**(vii) Date given to the investment adviser.**

**(viii) Date sent to client or sender.**

**(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender.**

**(x) Mail confirmation or courier tracking number, if applicable, or confirmation by client or sender of the fund's or security's return.**

**(z) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that meet the exception from custody under R 451.4.13, the investment adviser shall keep both of the following records:**

**(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities.**

**(ii) A copy of any legend, shareholder agreement or other agreement providing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.**

**(aa) An investment adviser that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain all of the following:**

**(i) Copies of all policies and procedures required by R 451.4.20.**

**(ii) A copy of each proxy statement that the investment adviser receives regarding client securities. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a copy of a proxy statement, provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request, or may rely on obtaining a copy of a proxy statement from the EDGAR system.**

**(iii) A record of each vote cast by the investment adviser on behalf of the client. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a record of the vote cast, provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request.**

**(iv) A copy of any document created by the adviser that was material to making a decision how to vote proxies on behalf of a client or that memorializes the basis for that decision.**

**(v) A copy of each written client request for information on how the adviser voted proxies on behalf of the client, and a copy of any written response by the investment adviser to any written or oral client request for information on how the adviser voted proxies on behalf of the requesting client.**

**(3) If an investment adviser has custody, the records required to be made and kept under subrule (2) of this rule shall include all of the following:**

**(a) A copy of all documents executed by a client, including a limited power of attorney, under which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian.**

**(b) A journal or other record showing all purchases, sales, receipts and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts.**

**(c) A separate ledger account for a client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.**

**(d) Copies of confirmations of all transactions effected by or for the account of a client.**

**(e) A record for each security in which a client has a position. This record shall show at a minimum the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.**

**(f) A copy of the client's monthly or quarterly account statements, as may be applicable, as generated and delivered by the qualified custodian. If the investment adviser also generates a statement that is delivered to the client, the investment adviser shall also maintain copies of such statements along with the date such statements were sent to the client.**

**(g) If applicable to the investment adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.**

**(h) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.**

**(i) If applicable, evidence of the client's designation of an independent representative.**

**(4) If an investment adviser has custody because it advises a pooled investment vehicle, the investment adviser shall also keep in addition to any other applicable record retention requirements, the following records:**

**(a) True, accurate, and current account statements.**

**(b) Where the investment adviser complies with the exception found in 17 C.F.R. §275.206(4)-2(b)(4), the records required to be made and kept shall include all of the following:**

**(i) The date or dates of the audit.**

**(ii) A copy of the audited financial statements.**

**(iii) Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.**

**(5) An investment adviser subject to subrule (2) of this rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current both of the following:**

**(a) Records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale.**

**(b) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.**

**(6) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.**

**(7) Every investment adviser subject to subrule (2) of this rule shall preserve all of the following records in the following manner:**

**(a) All books and records required to be made under the provisions of subrules (2) to (3)(a) of this rule, except for books and records required to be made under the provisions of subrules (2)(k) and (s) of this rule, shall be maintained and preserved in an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years in the principal office of the investment adviser.**

**(b) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.**

**(c) Books and records required to be made under the provisions of subrule (1)(s) and (2)(k) of this rule, shall be maintained and preserved in an easily accessible place for a period of not less than 5 years, the first 2 years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.**

**(d) Books and records required to be made under the provisions of subrule (2)(t) to (y) of this rule, shall be maintained and preserved in an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on such record, the first 2 years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.**

**(e) Notwithstanding other record preservation requirements of this rule, all of the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:**

**(i) Records required to be preserved under subrules (2)(c), (g) to (j), (r), (t) to (v), (3) and (4) of this rule.**

**(ii) Records or copies required under the provision of subrule (2)(k) and (s) of this rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.**

**(8) An investment adviser subject to subrule (2) of this rule, that ceases to conduct or discontinues business as an investment adviser shall arrange for and be responsible for the retention of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing prior to ceasing to conduct or discontinuing business of the exact address where the books and records shall be maintained.**

**(9) Pursuant to subrule (6) of this rule, the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on any of the following:**

**(a) Paper or hard copy form, as those records are kept in their original form.**

**(b) Micrographic media, including microfilm, microfiche, or any similar medium.**

**(c) Electronic storage media, including any digital storage medium or system that meets the terms of this rule.**

**(10) Pursuant to subrule (6) of this rule, the investment adviser shall do both of the following:**

(a) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.

(b) Provide promptly any of the following that the administrator, by its examiners or other representatives, may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored.

(ii) A legible, true, and complete printout of the record.

(iii) Means to access, view, and print the records.

(11) Pursuant to subrule (6) of this rule, in the case of records created or maintained on electronic storage media, the investment adviser shall establish and maintain procedures to do all of the following:

(a) Maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction.

(b) Limit access to the records to properly authorized personnel and the administrator, including its examiners and other representatives.

(c) Reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(d) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this rule.

(12) A book or other record made, kept, maintained, and preserved in compliance with rules 17a-3 and 17a-4 under the securities exchange act of 1934, 17 C.F.R. §240.170a-3 and 17 C.F.R. §240.170a-4 which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this rule, shall be deemed to be made, kept, maintained, and preserved in compliance with this rule.

(13) An investment adviser registered, or required to be registered, in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is registered or licensed in such state and is in compliance with such state's recordkeeping requirements.

**R 451.4.25 Prohibited practices of investment advisers and investment adviser representatives.**

**Rule 4.25. (1) For purposes of this rule, the following definitions apply:**

(a) “Publicly distributed written materials” means written materials that are distributed to 35 or more persons who pay for those materials.

(b) “Publicly made oral statements” means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(2) A person who is an investment adviser or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or an investment adviser representative and its clients and the circumstances of each case, an investment adviser or an investment adviser representative shall not engage in fraudulent, deceptive, or manipulative conduct, including but not limited to, the following:

(a) Recommending to a client to whom investment adviser services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

**(b) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary authority relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.**

**(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.**

**(d) Placing an order to purchase or sell a security for the account of a client without authority to do so.**

**(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.**

**(f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.**

**(g) Loaning money or securities to a client unless the investment adviser is a broker-dealer, bank, or other financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.**

**(h) Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, or any employee, or person affiliated with the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.**

**(i) Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders such a report in the normal course of providing service.**

**(j) Charging a client an unreasonable advisory fee.**

**(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or investment adviser representative, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice, including but not limited to, the following:**

**(i) Compensation arrangements connected with investment adviser services to clients which are in addition to compensation from such clients for such services.**

**(ii) Charging a client an investment adviser fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice shall be received by the investment adviser or investment adviser representative or its employees, or affiliated persons.**

**(l) While acting as principal for an advisory account of the investment adviser or investment adviser representative, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction. The prohibitions of this subdivision shall not apply to either of the following:**

**(i) A transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.**

**(ii) A transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely by any of the following methods:**

**(A) By means of publicly distributed written materials or publicly made oral statements.**

**(B) By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts.**

**(C) Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security.**

**(D) Any combination of the foregoing services.**

**(m) Guaranteeing a client that a specific result shall be achieved with advice rendered.**

**(n) Publishing, circulating, or distributing any advertisement which directly or indirectly does not comply with rule 206(4)-1 under the investment advisers act of 1940.**

**(o) Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.**

**(p) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of sections 204A of the investment advisers act of 1940, 17 C.F.R. §275.204A-1.**

**(q) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of R 451.4.13.**

**(r) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the act or any rule or regulation thereunder.**

**(3) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as a principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the act.**

**(4) The prohibition on agency cross transactions shall not apply if all of the following conditions are met:**

**(a) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client.**

**(b) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as a broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions.**

**(c) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this rule sends the client a written confirmation. The written confirmation shall include all of the following:**

**(i) A statement of the nature of the transaction.**

**(ii) The date the transaction took place.**

**(iii) An offer to furnish, upon request, the time when the transaction took place.**

(iv) The source and amount of any other remuneration the investment adviser received or shall receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has received or shall receive any other remuneration and that the investment adviser shall furnish the source and amount of such remuneration to the client upon the client's written request.

(5) At least annually, with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule to conduct agency cross transactions is required to send each client a written disclosure statement identifying both of the following:

(a) The total number of agency cross-transactions during the period for the client since the date of the last such statement or summary.

(b) The total amount of all commissions or other remuneration the investment adviser received or shall receive in connection with agency cross transactions for the client during the period.

(6) Each written disclosure and confirmation shall include a conspicuous statement that the client may revoke the written consent required by this rule at any time by providing written notice to the investment adviser.

(7) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(8) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling a duty with respect to the best price and execution for the particular transaction for the client, nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the act or rules.

(9) For the purposes of this rule, the term investment adviser representative shall exclude a supervised person of a federal covered investment adviser as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 17 C.F.R. §275.203A-3.

#### **R 451.4.26 Investment adviser contracts.**

**Rule 4.26.** (1) For purposes of this rule, the following definitions apply:

(a) "Assignment," as used in subrule (3)(b) of this rule, includes, but is not limited to, a transaction or event that results in a change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50% of any class of voting securities of, the investment adviser as compared to the individuals or entities that had such power as of the date when the contract was first entered into, extended, or renewed.

(b) "Private investment company" means a company that is defined as an investment company under section 3(a) of the investment company act of 1940, 15 U.S.C. §80a-3(a), but for the exception provided from that definition by section 3(c)(1) of the investment company act of 1940, 15 U.S.C. §80A-3.

(2) This rule applies to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the national securities markets improvement act of 1996, 15 U.S.C. §78a et seq.

(3) It shall be unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

(a) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or

**non-performance of the contract, and any grant of discretionary power to the investment adviser or any of its investment adviser representatives.**

**(b) That no direct or indirect assignment or transfer of the contract may be made by the investment adviser without the consent of the client or other party to the contract.**

**(c) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.**

**(d) That the investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.**

**(4) It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to do any of the following:**

**(a) Include in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or the investment advisers act of 1940, 15 U.S.C. §80b-1 et seq., or any other practice contrary to the provisions of section 215 of the investment advisers act of 1940, 15 U.S.C. §80b-15.**

**(b) Enter into, extend or renew any advisory contract contrary to the provisions of section 205 of the investment advisers act of 1940, 15 U.S.C. §80b-5. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under the act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. §80b-3.**

**(5) Notwithstanding subrule (3)(c) of this rule, an investment adviser may enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if both of the following occur:**

**(a) The investment adviser is not registered and is not required to be registered pursuant to section 403 of the act, MCL 451.2403.**

**(b) All of the following conditions are met:**

**(i) The client entering into the contract is a “qualified client”, as defined by rule 205-3 under the investment advisers act of 1940, 17 C.F.R. §275.205-3.**

**(ii) To the extent not otherwise disclosed on part 2 of Form ADV, the investment adviser shall disclose in writing to the client all material information concerning the proposed advisory arrangement, including all of the following:**

**(A) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee.**

**(B) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client’s account.**

**(C) The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee.**

**(D) The nature of any index that will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate.**

**(E) Where the investment adviser’s compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of rule 2a-4(a)(1) under the investment company act of 1940, 17 C.F.R. §270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.**

**(6) In the case of a private investment company, an investment company registered under the investment company act of 1940, 15 U.S.C. §§ 80a-1, et seq. or a business development company, as defined in section 202(a)(22) of the investment advisers act of 1940, 15 U.S.C. §80b-2(a)(22), each equity owner of any such company, except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation, shall be considered a client for purposes of subrules (3)(c) and (5) of this rule.**

**R 451.4.27 Dishonest or unethical business practices of broker-dealers and agents.**

**Rule 4.27. (1) “Dishonest or unethical practices” for purposes of section 412(4)(m) of the act, MCL 451.2412(4)(m), shall include the conduct prohibited in this rule. The conduct specified in subrules (2) and (3) of this rule is not all inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration.**

**(2) Prohibited conduct of broker-dealers registered, or required to be registered, under the act includes, but is not limited to, the following:**

**(a) Engaging in unreasonable and unjustifiable delaying or failing to execute orders, liquidate customer’s account or in the delivery of securities purchased by any of its customers or in the payment upon request, free credit balances reflecting completed transactions of any of its customers.**

**(b) Inducing trading in a customer’s account that is excessive in size or frequency in view of the financial resources and character of the account.**

**(c) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.**

**(d) Executing a transaction on behalf of a customer without authorization to do so.**

**(e) Exercising any discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time, price, or both for executing of orders.**

**(f) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.**

**(g) Failing to segregate customer’s free securities or securities held in safekeeping.**

**(h) Hypothecating a customer’s securities without having a lien on it, unless the broker-dealer secures from the customer a properly executed written consent, except as permitted by SEC rule 8c-1, 17 C.F.R. §240.8c-1, or SEC rule 15c2-1, 17 C.F.R. §240.15c2-1.**

**(i) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.**

**(j) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus or making oral or written statements contrary to or inconsistent with the disclosures contained in the prospectus.**

**(k) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.**

**(l) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.**

**(m) Representing that a security is being offered to a customer “at the market” or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person from whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer.**

**(n) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to the following:**

**(i) Effecting any transaction in a security which involves no change in the beneficial ownership of the security.**

**(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered for the purpose of creating a false or misleading appearance of active trading the security or a false or misleading appearance with respect to the market for the security; provided; however, nothing in this subdivision shall prohibit a broker-dealer from entering a bona fide agency cross transaction for its customers.**

**(iii) Effecting, alone or with 1 or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.**

**(iv) Guaranteeing a customer against loss in any securities account of such customer or in any securities transaction effected by the broker-dealer with or for such customer.**

**(v) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security.**

**(vi) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading including, but not limited to, distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer or display by words, picture, graphs or other medium designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure.**

**(vii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security that is offered or sold to the customer. The existence of any control or affiliation shall be disclosed to the customer in writing prior to completion of the transaction.**

**(viii) Failing to make a public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member, by engaging in conduct including both of the following:**

**(A) Parking or withholding securities.**

**(B) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities shall be returned to the broker-dealer, or the broker-dealer's nominee.**

**(ix) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.**

**(x) Marking any order tickets or confirmation as unsolicited when the transaction is solicited.**

**(xi) Failing to comply with any applicable provision of the FINRA conduct rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.**

**(xii) In connection with the solicitation of a sale or purchase of an "Over the Counter" non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under section 13 of the securities exchange act of 1934, 15 U.S.C. §78m, when requested to do so by a customer.**

**(3) Prohibited conduct of agents registered or required to be registered under the act include any of the following:**

**(a) Lending money or securities to or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer.**

**(b) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.**

**(c) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited.**

**(d) Sharing, directly or indirectly, in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer that the agent represents.**

**(e) Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.**

**(f) Engaging in conduct specified in subrules (2)(a), (b), (c), (d), (e), (f), (i), (j) and (n)(iv), (v), (vi), (x), (xi), and (xii).**

#### **R 451.4.28 Use of senior-specific certifications and professional designations.**

**Rule 4.28. (1) The use of a senior-specific certification or designation by a person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead a person shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:**

**(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation.**

**(b) Use of a nonexistent or self-conferred certification or professional designation.**

**(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have.**

**(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following:**

- (i) Is primarily engaged in the business of instruction in sales or marketing, or both.**
- (ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants.**
- (iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.**
- (iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.**

**(2) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subrule (1)(d) of this rule when the organization has been accredited by any of the following:**

- (a) The American national standards institute.**
- (b) The national commission for certifying agencies.**
- (c) An organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the designation or credential issued does not primarily apply to sales or marketing, or both.**

**(3) In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include both of the following:**

- (a) Use of 1 or more words, such as senior, retirement, elder, or similar words, combined with 1 or more words, such as certified, registered, chartered, adviser, specialist, consultant, planner, or similar words in the name of the certification or professional designation.**
- (b) The manner in which those words are combined.**

**(4) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title does any of the following:**

- (a) Indicates seniority or standing within the organization.**
- (b) Specifies an individual’s area of specialization within the organization.**
- (c) For purposes of this subrule, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the investment company act of 1940, 15 U.S.C. §80a-3.**

## **PART 6. ADMINISTRATION AND JUDICIAL REVIEW**

### **R 451.6.1 Interpretative opinions.**

**Rule 6.1. (1) An interpretative opinion may be issued pursuant to section 605(4) of the act, MCL 451.2605(4); however, the administrator may refuse to issue an interpretative opinion.**

**(2) An interpretative opinion issued by the administrator is an informal position and is not a declaratory ruling or a formal order. An interpretative opinion does not have quasi-judicial force or effect and is not subject to judicial review.**

**(3) A person who is interested in receiving an interpretative opinion shall submit an interpretative opinion request that must comply with all of the following:**

- (a) An original and 1 copy of each request shall be submitted to the administrator. Two copies of all relevant documents, including offering materials, contracts, and agreements, shall be submitted as attachments to the request.**

(b) Immediately below the inside address of the letter of request the specific section or sections of the act shall be stated. If the request involves more than 1 section or subsection of a statute each section shall be specifically indicated and explained to permit the administrator to reasonably ascertain the nature of the request.

(c) The fact situation underlying the request shall be stated completely and accurately. A concise statement of the issues presented shall be included in the request.

(d) The request shall contain an analysis by the requestor's legal counsel of the issues presented and legal counsel's conclusion.

(e) As an alternative to subdivision (d) of this subrule, if private legal counsel has not stated an opinion, the request shall contain the requestor's analysis of the issues presented and the requestor's conclusion. The requestor shall state why a problem exists, the requestor's opinion on the matter, and the basis for the requestor's opinion.

(4) A request shall state the names of all persons involved in the request and shall not relate to hypothetical fact situations. A request shall be confined to the particular fact situation at hand and shall not attempt to include every possible type of situation which may arise in the future.

(5) Failure to follow the procedure and requirements of this rule may result in the return of the request for compliance or in a denial of the request.

#### **R 451.6.2 Copy and certification fees.**

##### **Rule 6.2.**

(1) The administrator shall charge the following fees for furnishing records:

- |   |         |
|---|---------|
| (a) Minimum fee for uncertified copies, up to 6 pages | \$10.35 |
| (b) Copy fee per page                                 | \$ 1.75 |
| (c) Certification fee                                 | \$17.25 |
| (d) Certificate of fact or other detailed certificate | \$34.50 |

(2) The administrator may adjust copy and certification fees specified in subrule (1) of this rule every 2 years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index in the preceding 2-year period and rounded to the nearest dollar. As used in this rule, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the Bureau of Labor Statistics of the United States Department of Labor.

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**NOTICE OF PUBLIC HEARING**

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**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATION, SECURITIES, AND COMMERCIAL LICENSING BUREAU**

**SECURITIES RULES  
Rule Set 2015-027 LR**

**NOTICE OF PUBLIC HEARING  
TUESDAY, SEPTEMBER 6, 2016  
702 W. Kalamazoo Street, Lansing, Michigan 48915  
Forum, 1<sup>st</sup> Floor, 9:00 AM**

The Department of Licensing and Regulatory Affairs will hold a public hearing on Tuesday, September 6, 2016, at the Library of Michigan, 702 W. Kalamazoo Street, Lansing, Michigan 48915 in the Forum on the first floor at 9:00 a.m. The hearing will be held to receive public comments on proposed changes to the Administrative Rules for the Michigan Uniform Securities Act.

The proposed rule set (2015-027 LR) will revise the current rules to conform to the requirements set forth in Public Act 551 of 2008, MCL 451.2101 *et seq.*

These rules are promulgated by the authority conferred on the Department of Licensing and Regulatory Affairs by sections 102 and 605 of 2008 PA 551, MCL 451.2102 and MCL 451.2605; and Executive Reorganization Order No.2012-6, MCL 445.2034. These rules will take effect immediately upon filing with the Secretary of State.

The rules (2015-027 LR) are published on the Office of Regulatory Reinvention's website at [www.michigan.gov/orr](http://www.michigan.gov/orr) and in the September 1, 2016 issue of the *Michigan Register*. Comments may be submitted to the following address by 5:00 P.M. on Tuesday, September 6, 2016. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Department of Licensing and Regulatory Affairs  
Stephen Brey, Corporation, Securities, and Commercial Licensing Bureau  
P.O. Box 30018  
Lansing, MI 48909-7518  
Phone: 517-241-9212  
Fax: 517-241-7539  
E-mail: [breys@michigan.gov](mailto:breys@michigan.gov)

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations in order to participate in the hearing (such as information in alternative formats) should contact the Bureau at 517-241-9212 at least 14 days prior to the hearing date. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. Information at this meeting will be presented by speakers and printed handouts.

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**PROPOSED ADMINISTRATIVE RULES**

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**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS** ~~CONSUMER AND  
INDUSTRY SERVICES~~

**DIRECTOR'S OFFICE**  
~~BUREAU OF SAFETY AND REGULATION~~

**GENERAL INDUSTRY SAFETY STANDARDS COMMISSION**

Filed with the Secretary of State on

Proposed June 27, 2016

These rules take effect immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the **director of the department of licensing and regulatory affairs by sections 16 and 21 of 1974 PA 154, MCL 408.1016 and 408.1021, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030** ~~general industry safety standards commission by sections 16 and 21 of Act No. 154 of the Public Acts of 1974, as amended, being SS408.1016 and 408.1021 of the Michigan Compiled Laws~~)

R 408.12401, R 408.12403, R 408.12407, R 408.12408, R 408.12411, R 408.12412, R 408.12413, R 408.12422, R 408.12425, R 408.12428, R 408.12433, R 408.12442, R 408.12451, R 408.12461, R 408.12463, R 408.12464, R 408.12471, and R 408.12475 of the administrative code are amended, and R 408.12402 is added, as follows:

**PART 24. MECHANICAL POWER PRESSES**

**GENERAL PROVISIONS**

R 408.12401 Scope.

Rule 2401. **(1)** This **standard** ~~part~~ applies to power presses **that** ~~which~~ shear, punch, form, or assemble metal or any other material by means of tools or dies attached to plungers or slides and **that** ~~which~~ are commonly referred to as mechanical power presses. ~~This part does not apply to any of the following:~~

~~(a) Hydraulic presses.~~

~~(b) Iron workers.~~

~~(c) Press brakes.~~

~~(d) Bulldozers.~~

~~(e) Hot metal presses.~~

~~(f) Forging hammers.~~

~~(g) Hot bending presses.~~

~~(h) Molding or riveting machines.~~

~~(i) Welder presses.~~

- ~~(j) Nut clinching machines.~~
- ~~(k) Metal stitching machines.~~
- ~~(l) Stationary engraving presses.~~
- ~~(m) Powdered metal presses.~~
- ~~(n) Multislide machines.~~

**(2) This standard does not apply to any of the following:**

- (a) Hydraulic presses.**
- (b) Iron workers.**
- (c) Press brakes.**
- (d) Bulldozers.**
- (e) Hot metal presses.**
- (f) Forging hammers.**
- (g) Hot-bending presses.**
- (h) Molding or riveting machines.**
- (i) Welder presses.**
- (j) Nut clinching machines.**
- (k) Metal stitching machines.**
- (l) Stationary engraving presses.**
- (m) Powdered metal presses.**
- (n) Multi-slide machines.**

**R 408.12402 Adopted and referenced standards.**

**Rule 2402. (1) The following standards are adopted by reference in these rules and are available from IHS Global, 15 Inverness Way East, Englewood, Colorado, 80112, USA, telephone number: 1-800-854-7179 or via the internet at website: <http://global.ihs.com>; at a cost as of the time of adoption of these rules, as stated in this subrule.**

**(a) American Society of Mechanical Engineers ASME “Pressure Vessel Code,” Section VIII, “Unfired Pressure Vessels,” 1974 edition. Cost: \$514.00.**

**(b) ASME “Pressure Vessel Code,” Section VIII, “Unfired Pressure Vessels,” 1983 edition. Cost: \$514.00**

**(2) The standards adopted in these rules are available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, Lansing, Michigan, 48933.**

**(3) Copies of the standards adopted in these rules may be obtained from the publisher or may be obtained from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143, at the cost charged in this rule, plus \$20.00 for shipping and handling.**

**(4) The Michigan occupational safety and health General Industry Safety Standard Part 1 “General Provisions,” R 408.1001 to R 408.10098, is referenced in these rules. Up to 5 copies of this standard may be obtained at no charge from the Michigan Department of licensing and regulatory affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at website: [www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost, at the time of adoption of these rules, is 4 cents per page.**

**R 408.12403 Definitions; A to C.**

Rule 2403. (1) "Adjustable barrier guard" means a barrier ~~that which~~ is adjustable for different jobs or die setups.

(2) "**Anti-repeat**" ~~Antirepeat~~ means the part of the clutch/brake control system designed to limit the press to a single stroke. **Anti-repeat** ~~Antirepeat~~ requires release of all tripping mechanisms before another stroke can be initiated. **Anti-repeat** ~~Antirepeat~~ is also called single stroke reset or reset circuit.

(3) "Automatic feeding" means feeding where the material or part being processed is placed within or removed from the point of operation by a method or means that does not require action by an operator on each stroke of the press.

(4) "Bolster plate" means the plate attached to the top of the bed of the press having drilled holes to T-slots for attaching the lower die or die shoe.

(5) "Brake" means the mechanism used on a mechanical press to stop or hold, or both, the crankshaft, either directly or through a gear train, when the clutch is disengaged.

(6) "Brake monitor" means the sensor designed, constructed, and arranged to monitor the effectiveness of the press braking system.

(7) "Clutch" means the coupling mechanism used on a mechanical press to couple the flywheel to the crankshaft, either directly or through a gear train. See R 408.12404(9), R 408.12405(7), and R 408.12407(4).

(8) "Concurrent" means acting in conjunction with, but not necessarily simultaneously with, and is used to describe a situation where 2 or more controls exist in an operated condition at the same time.

(9) "Continuous" means uninterrupted multiple strokes of the slide without intervening stops or other clutch control action at the end of individual strokes.

(10) "Control system" means the combination of controls that have an effect on the cycling or stopping of the ram where the safety of the operator would be influenced.

(11) "Counterbalance" means the mechanism that is used to balance or support the weight of the connecting rods, slide, and slide attachments.

#### R 408.12407 Definitions; L to P.

Rule 2407. (1) "Liftout" means the mechanism also known as knockout.

(2) "Manual feeding" means feeding where the material or part being processed is handled by the operator on each stroke of the press.

(3) "Operator" means an individual who performs production work on a press.

(4) "Operator's station" means the complete complement of controls used by or available to an operator on a given operation for stroking the press.

(5) "Part revolution clutch" means a type of clutch that can be disengaged at any point before the crankshaft has completed a full revolution and the press slide has completed a full stroke.

(6) "Pinch point" means any point, other than the point of operation, at which it is possible for a part of the body to be injured by being caught between the moving parts of a press or auxiliary equipment, between moving and stationary parts of a press or auxiliary equipment, or between the material and moving part or parts of the press or auxiliary equipment.

(7) "Point of operation" means the area of the die where material is actually positioned and work is being performed during any process, such as shearing, punching, forming, or assembling.

(8) "Presence-sensing device" means a device that is designed, constructed, and arranged to create a sensing field or area and to deactivate the clutch control of the press when a hand or other body part of an operator is within such field or area **and activate the brake of the press.**

(9) "Press," as referred to in this part, means a mechanically powered machine that shears, punches, forms, or assembles metal or other material by means of cutting, shaping, or combination dies attached to slides and is commonly referred to as a mechanical power press. A press consists of a stationary bed

or anvil and a slide having a controlled reciprocating motion toward and away from the bed surface, the slide being guided in a definite path by a frame of the press.

(10) "Pull-out device" means a mechanism ~~that which~~ is attached to the operator's hands and connected to the upper die or slide of the press and ~~that which~~ is designed, when properly adjusted, to withdraw the operator's hands as the dies close if the operator's hands are inadvertently within the point of operation.

R 408.12408 Definitions; R, S.

Rule 2408. (1) "Repeat" means an unintended or unexpected successive power stroke of the press resulting from a malfunction.

(2) "Safety block" means a prop that, when inserted between the upper and lower dies or between the bolster plate and the face of the slide, prevents the slide from falling of its own dead weight.

(3) "Semiautomatic feeding" means feeding wherein the material or part being processed is placed within, or removed from, the point of operation by an auxiliary means controlled by an operator on each stroke of the press.

(4) "Single stroke" means 1 complete stroke of the slide, usually initiated from a full open (or up) position, followed by closing (or down), and then a return to the full open position.

(5) "Single stroke mechanism" means an arrangement used on a full revolution clutch to limit the travel of the slide to 1 complete stroke at each engagement of the clutch.

(6) "Slide" means the main reciprocating press member. A slide is also called a ram, plunger, or platen.

(7) "Stop control" means an operator control designed to immediately deactivate the clutch control and activate the brake to stop slide motion.

(8) "Stripper" means a mechanism or die part for removing the parts or material from the punch.

(9) "Stroking selector" means the part of the clutch/brake control that determines the type of stroking when the operating means is actuated. The stroking selector generally includes positions for "off" **such as clutch control**, (~~clutch control~~); "inch," "single stroke," and "continuous" **such as when continuous is furnished**. (~~when continuous is furnished~~).

(10) "Sweep device" means a single or double arm(rod) attached to the upper die or slide of the press and designed to move the operator's hands to a safe position, as the dies close, if the operator's hands are inadvertently within the point of operation.

R 408.12411 Employer responsibilities.

Rule 2411. (1) An employer shall train and instruct an operator in the safe method of work before starting work on any operation covered by this **standard**. ~~part~~. The employer shall ensure that correct operating procedures are being followed, that all required safeguards are installed, and that the safeguards are functional and are being used.

(2) An employer shall train and instruct maintenance and inspection personnel who are responsible for the care, inspection, and maintenance of mechanical power presses and assure that they are knowledgeable in these rules.

(3) An employer shall provide clearance between machines so that movement of one operator does not interfere with the work of another. Ample room for cleaning machines and for handling material, **work-pieces**, ~~workpieces~~, and scrap shall also be provided. All surrounding floors shall be kept in good condition and free from obstructions, grease, oil, and water.

(4) An employer shall operate each press within the tonnage and attachment weight ratings specified by the manufacturer.

(5) An employer shall obtain, from any outside firm that modifies a press, instructions that are needed to establish new or changed guidelines for the care and use of the modified press.

R 408.12412 Inspection and maintenance records.

Rule 2412. (1) An employer shall establish and follow an inspection program **having a general component and a directed component according to the following:** ~~for each press to ensure that its parts, auxiliary equipment, and safeguards are in a safe operating condition and are properly adjusted. An inspection shall be conducted at least semiannually. The employer shall maintain a certification record of inspections. The record shall include all of the following information:~~

(a) **Under the general component of the inspection program, the employer shall do the following:** ~~The date of the inspection.~~

(i) **Conduct periodic and regular inspections of each power press to ensure that all of its parts, auxiliary equipment, and safeguards, including the clutch/brake mechanism, anti-repeat feature, and single-stroke mechanism, are in a safe operating condition and adjustment.**

(ii) **Perform and complete necessary maintenance or repair, or both, before operating the press.**

(iii) **Maintain a certification record of each inspection, and each maintenance and repair task performed, under the general component of the inspection program that includes the date of the inspection, maintenance, or repair work, the signature of the person who performed the inspection, maintenance, or repair work, and the serial number, or other identifier, of the power press inspected, maintained, and repaired.**

(b) **Under the directed component of the inspection program, the employer shall do all of the following:** ~~The signature of the person who performed the inspection.~~

(i) **Inspect and test each press on a regular basis at least once a week to determine the condition of the clutch/brake mechanism, anti-repeat feature, and single-stroke mechanism.**

(ii) **Perform and complete necessary maintenance or repair, or both, on the clutch/brake mechanism, anti-repeat feature, and single-stroke mechanism before operating the press.**

(iii) **Maintain a certification record of each maintenance task performed under the directed component of the inspection program that includes the date of the maintenance task, the signature of the person who performed the maintenance task, and the serial number, or other identifier, of the power press maintained.**

**Note to subdivision (b) of this rule: Inspections of the clutch/brake mechanism, anti-repeat feature, and single-stroke mechanism conducted under the directed component of the inspection program are exempt from the requirement to maintain certification records specified by subdivision (a)(iii) of this subrule, but inspections of the clutch/brake mechanism, anti-repeat feature, and single-stroke mechanism conducted under the general component of the inspection program are not exempt from this requirement.**

(c) **Subdivision (b) of this subrule does not apply to presses that comply with R 408.12429.** ~~The serial number or other identifier of the power press that was inspected.~~

(2) ~~Each press shall be inspected and tested not less than weekly to determine the condition of the clutch/brake mechanism, anti-repeat antirepeat feature, and single stroke mechanism. Necessary maintenance or repair, or both, shall be performed and completed before the press is operated. These requirements do not apply to presses that are in compliance with the provisions of R 408.12422(2) and R 408.12429. The employer shall maintain a certification record of inspections, tests, and maintenance work. The record shall include all of the following information:~~

~~(a) The date of the inspection, test, or maintenance.~~

~~(b) The signature of the person who performed the inspection, test, or maintenance.~~

~~(c) The serial number or other identifier of the press that was inspected, tested, or maintained.~~

(2) ~~(3)~~ When an inspection of a press reveals a condition that is likely to lead to a component failure that could cause an injury to the operator or other employee, the condition shall be corrected before the press is operated.

~~(4) An employer shall maintain a record of the last 2 inspections for each press and the maintenance work that was performed as a result of the inspections.~~

#### R 408.12413 Reports of injuries.

Rule 2413. An employer shall, within 30 days of the occurrence, report to the **director** ~~Director~~ of the **Michigan Occupational Safety and Health Administration (MIOSHA), 530 West Allegan Street, Bureau of Safety and Regulation of the Michigan Department of Labor, State Secondary Complex, 7150 Harris Drive, Box 30015, Lansing, Michigan 48933 48909**, all point of operation injuries or injuries within the confines of the die to operators or other employees. All of the following information shall be included in the report:

- (a) Employer's name, address, and location of the workplace **and establishment.** ~~(establishment).~~
- (b) Employee's name, injury sustained, date of injury, and the task being performed **such as operation, setup, maintenance, or other tasks.** ~~(operation, setup, maintenance, or other).~~
- (c) Type of clutch used on the press **such as full revolution, part revolution, or direct drive.** ~~(full revolution, part revolution, or direct drive).~~
- (d) Type of safeguard being used **such as 2-hand control, 2-hand trip, pull-outs, or other safeguards.** ~~(2-hand control, 2-hand trip, pull-outs, sweeps, or other).~~ If the safeguard is not described herein, give a complete description.
- (e) Cause of the accident **such as repeat of press, safeguard failure, removing stuck part or scrap, no safeguard provided, no safeguard in use, or other causes.** ~~(repeat of press, safeguard failure, removing stuck part or scrap, no safeguard provided, no safeguard in use, or other).~~
- (f) Type of feeding **such as manual with hands in dies or with hands out of dies, semiautomatic, automatic, or other types of feeding.** ~~(manual with hands in dies or with hands out of dies, semiautomatic, automatic, or other).~~
- (g) Means used to actuate press stroke **such as foot trip, foot control, hand trip, hand control, or other means.** ~~(foot trip, foot control, hand trip, hand control, or other).~~
- (h) Number of operators required for the operation and the number of operators provided with controls and safeguards.

#### R 408.12425 Slide counterbalance systems.

Rule 2425. (1) Spring counterbalance systems, when used, shall incorporate means to retain system parts in event of breakage.

(2) Spring counterbalances, when used, shall have the capability to hold the slide and its attachments at **mid-stroke, midstroke**, without brake applied.

(3) An air counterbalance cylinder shall **have all of the following**:

- (a) Incorporate means to retain the piston and rod in case of breakage or loosening.
- (b) Have adequate capability to hold the slide and its attachments at any point in stroke, without brake applied.
- (c) Incorporate means to prevent failure of capability (sudden loss of pressure) in event of air supply failure.

#### R 408.12428 Pressure **vessels.** ~~vessels; adoption of standards.~~

Rule 2428. (1) A pressure vessel that is used in conjunction with a press before **June 15, 1990**, ~~the effective date of this amendatory rule~~ shall be as prescribed in **American Society of Mechanical**

**Engineers ASME “Pressure Vessel Code,” Section VIII, “Unfired Pressure Vessels,” 1974 edition, as adopted in R 408.12402.** ~~the ASME~~

~~pressure vessel code, section VIII, unfired pressure vessels, 1974, which is adopted by reference in these rules and may be inspected at the Lansing office of the Michigan department of labor. This code may be purchased at a cost of \$40.00 from the American Society of Mechanical Engineers, 345 E. 47th Street, New York, New York 10017, or from the Michigan Department of Labor, State Secondary Complex, 7150 Harris Drive, Box 30015, Lansing, Michigan 48909.~~

(2) A pressure vessel that is installed in conjunction with a press after **June 15, 1990**, ~~the effective date of this part~~ shall be as prescribed in **ASME “Pressure Vessel Code,” Section VIII, “Unfired Pressure Vessels,” 1983 edition, as adopted in R 408.12402.** ~~the ASME pressure vessel code, section VIII, unfired pressure vessels, 1983, which is adopted by reference in these rules and may be inspected at the Lansing office of the Michigan department of labor. This code may be purchased at a cost of \$200.00 from the American Society of Mechanical Engineers, 345 E. 47<sup>th</sup> Street, New York, New York 10017, or from the Michigan Department of Labor, State Secondary Complex, 7150 Harris Drive, Box 30015, Lansing, Michigan 48909.~~

R 408.12433 Hand-operated levers.

Rule 2433. (1) **Hand-lever-operated** ~~Handlever operated~~ presses shall be equipped with a spring latch on the operating lever to prevent premature or accidental tripping.

(2) The operating levers on **hand-tripped** ~~handtripped~~ presses having more than 1 operating station shall be interlocked to prevent the tripping of the press except by the concurrent use of all levers.

R 408.12442 Stop control.

Rule 2442. (1) A red color stop control shall be provided with the clutch/brake control system and shall be located within the reach of the operator at the normal control station.

(2) Momentary operation of the stop control shall immediately initiate deactivation of the clutch and apply the brake.

(3) The stop control shall override any other control, and **re-actuation** ~~reactivation~~ of the clutch shall require use of the operating (tripping) means which has been selected.

R 408.12451 Engaging means failure.

Rule 2451. The clutch/brake control shall automatically deactivate in event of failure of the electrical power or pressure supply for the clutch engaging means. **Re-activation** ~~Reactivation~~ of the clutch shall require restoration of the electrical power or pressure supply and the use of the tripping mechanism.

R 408.12461 General requirements.

Rule 2461.(1) An employer shall provide and **ensure** ~~insure~~ the usage of point of operation guards or properly applied and adjusted point of operation devices on every production operation performed on a press. Point of operation guards shall conform to the provisions of table 1 and figure 1, except when the point of operation opening is less than 1/4 of an inch.

(2) Where an operator feeds or removes parts by placing 1 or both hands in the point of operation and where a 2-hand control, presence-sensing device, type-B gate, or movable barrier, ( on a part revolution clutch, ) is used for safeguarding, both of the following provisions shall be complied with:

(a) An employer shall use a control system and a brake monitor which comply with the provisions of R 408.12422(2) and R 408.12429. This requirement shall be complied with by November 1, 1975.

(b) Air clutch controls shall be designed to prevent a significant increase in the normal stopping time due to a failure within the operating valve mechanism and to inhibit further operation if such failure does occur, where a part revolution clutch is employed.

(3) The August 31, 1971; exceptions in the provisions of R 408.12445 and R 408.12449 do not apply to the requirements of this rule.

(4) Running production with the press on inch mode is not an acceptable form of operator protection. A guard or device as prescribed in R 408.12463 is required.

(5) Table 1 reads as follows:

<b>TABLE 1</b>	
<b>Distance of opening from point of operation hazard (inches)</b>	<b>Maximum width of opening (inches)</b>
<b>1/2 to 1 1/2</b>	<b>1/4</b>
<b>1 1/2 to 2 1/2</b>	<b>3/8</b>
<b>2 1/2 to 3 1/2</b>	<b>1/2</b>
<b>3 1/2 to 5 1/2</b>	<b>5/8</b>
<b>5 1/2 to 6 1/2</b>	<b>3/4</b>
<b>6 1/2 to 7 1/2</b>	<b>7/8</b>
<b>7 1/2 to 12 1/2</b>	<b>1 1/4</b>
<b>12 1/2 to 15 1/2</b>	<b>1 1/2</b>
<b>15 1/2 to 17 1/2</b>	<b>1 7/8</b>
<b>17 1/2 to 31 1/2</b>	<b>2 1/8</b>
<b>This table shows the distances that guards shall be positioned from the danger line in accordance with the required openings.</b>	

TABLE 1

Distance of opening Maximum width from point of operation of opening hazard (inches) (inches)

1/2 to 1 1/2.....1/4 1 1/2 to 2  
 1/2.....3/8 2 1/2 to 3  
 1/2.....1/2 3 1/2 to 5  
 1/2.....5/8 5 1/2 to 6  
 1/2.....3/4 6 1/2 to 7  
 1/2.....7/8 7 1/2 to 12  
 1/2.....1 1/4 12 1/2 to 15  
 1/2.....1 1/2 15 1/2 to 17  
 1/2.....1 7/8 17 1/2 to 31

1/2.....2 1/8

(6) Figure 1 reads as follows:

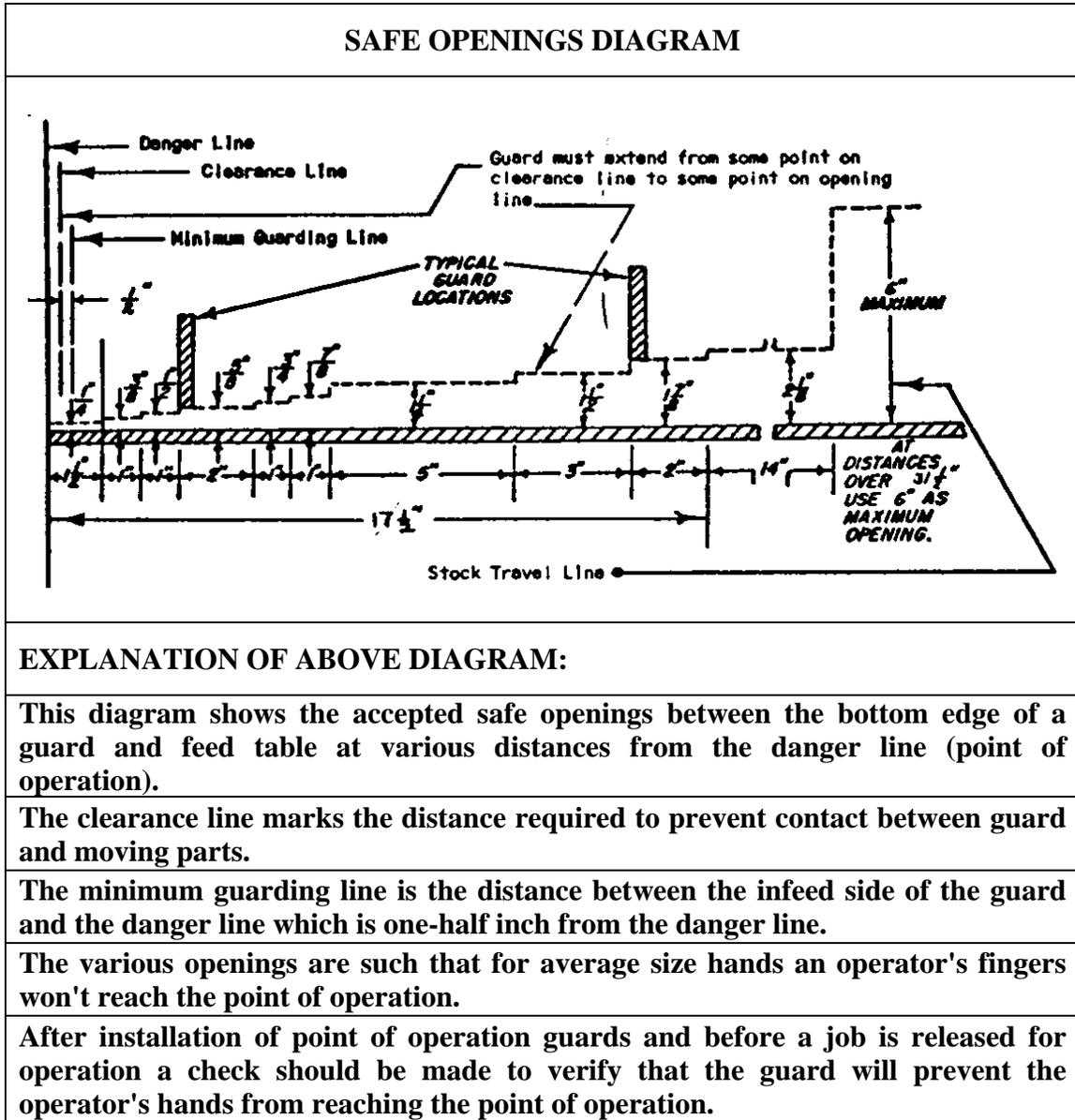
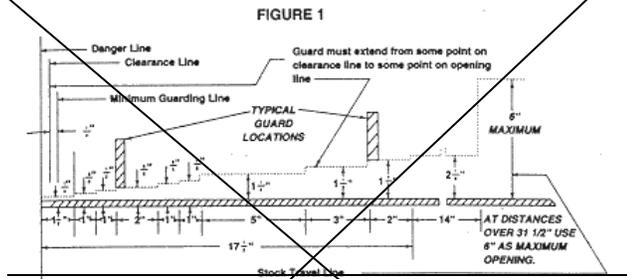


Figure for R 408.12461



Explanation of above diagram:

This diagram shows the accepted safe openings between the bottom edge of a guard and feed table at various distances from the danger line (point of operation).

The *clearance line* marks the distance required to prevent contact between guard and moving parts.

The *minimum guarding line* is the distance between the infeed side of the guard and the danger line which is 1/2 inch from the clearance line.

The various openings are such that, for average-size hands, an operator's fingers won't reach the point of operation.

After installation of point of operation guards, and before a job is released for operation, a check should be made to verify that the guard prevents the operator's hands from reaching the point of operation.

R 408.12463 Point of operation devices.

Rule 2463. (1) Point of operation devices shall protect the operator by 1 of the following methods:

- (a) Preventing or stopping, or both, the normal stroking of a press if the operator's hands are inadvertently placed in the point of operation.
- (b) Withdrawing an operator's hands if they are inadvertently located in the point of operation as the dies close or preventing the operator from inadvertently reaching into the point of operation as the dies close.
- (c) Preventing the operator from inadvertently reaching into the point of operation at all times.
- (d) Requiring the application of both of the operator's hands to the machine's operating controls and locating the controls at a distance from the point of operation that will permit the slide to complete the downward travel or stop before the operator can reach into the point of operation with his or her hands.
- (e) Enclosing the point of operation before a press stroke can be initiated and maintaining this closed condition until the motion of the slide ceases.
- (f) Enclosing the point of operation before a press stroke can be initiated so as to prevent an operator from reaching into the point of operation before die closure or before cessation of slide motion during the downward stroke.

(2) A gate or movable barrier device shall protect the operator **according to the following:** as follows:

- (a) A type-A gate or movable barrier device shall protect the operator as prescribed in subrule (1)(e) of this rule.
- (b) A type-B gate or movable barrier device shall protect the operator as prescribed in subrule (1)(f) of this rule.

(3) The presence-sensing point of operation device shall protect the operator as provided in subrule (1)(a) of this rule and shall be interlocked into the control circuit to prevent or stop slide motion if the operator's hand or other body part is within the sensing field of the device during the **down-stroke** ~~downstroke~~ of the press slide. All of the following provisions apply to a presence-sensing point of operation device:

- (a) The device shall not be used on machines that use full-revolution clutches.
- (b) The device shall not be used as a tripping means to initiate slide motion.

(c) The device shall be constructed so that a failure within the system does not prevent the normal stopping action from being applied to the press when required, but does prevent the initiation of a successive stroke until the failure is corrected. The failure shall be indicated by the system.

(d) Bypassing the protection function of a presence-sensing device during the upstroke of the press slide is permitted for the purpose of parts ejection, circuit checking, and feeding.

(e) The safety distance (Ds) from the sensing field to the point of operation shall be greater than the distance that is determined by the following formula:

$$D(s) = 63 \text{ inches/second} \times T(s)$$

where:

$$D(s) = \text{minimum safety distance (inches); } 63 \text{ inches/second} = \text{hand speed constant;}$$

and

$$T(s) = \text{stopping time of the press measured at approximately } 90 \text{ deg. position of crankshaft rotation (seconds).}$$

~~Ds = 63 inches/second x T where:~~

~~Ds = minimum safety distance (inches);~~

~~63 inches/second = hand speed constant; and~~

~~Ts = stopping time of the press measured approximately at the 90 degree position of crankshaft rotation (seconds).~~

(f) Guards shall be used to protect all areas of entry to the point of operation that are not protected by the presence-sensing device.

(4) The pull-out device shall protect the operator as prescribed in subrule (1)(b) of this rule and shall include attachments for each of the operator's hands. All of the following provisions apply to a pull-out device:

(a) Attachments shall be connected to, and operated only by, the press slide or upper die.

(b) Attachments shall be adjusted to prevent the operator from reaching into the point of operation or to withdraw the operator's hands from the point of operation or other pinch points before the dies close.

(c) A separate pull-out device or other safeguarding device that is in compliance with the provisions of this **standard part** shall be provided for each operator if more than 1 operator is used on a press.

(d) Each pull-out device in use shall be visually inspected and checked for proper adjustment at the start of each operator's shift, after a new die setup, or when operators are changed. Necessary maintenance or repair, or both, shall be performed and completed before the press is returned to production. The employer shall maintain records of these inspections and the maintenance work performed.

(e) Bolts, locator pins, or any other projections shall not be located in a manner that would catch the pullback cable or wristlet and hold an operator's hand in a pinch point or the point of operation.

(5) A sweep device shall not be used for point of operation safeguarding on a mechanical power press.

(6) A holdout or a restraint device shall protect the operator as prescribed in subrule (1)(c) of this rule and shall include attachments for each of the operator's hands. These attachments shall be securely anchored and adjusted so that the operator is restrained from reaching into the point of operation. A separate set of restraints or other safeguarding device that is in compliance with the provisions of this **standard part** shall be provided for each operator if more than 1 operator is required on a press.

(7) The 2-hand control device shall protect the operator as prescribed in subrule (1)(d) of this rule. All of the following provisions apply to a 2-hand control device:

(a) When used in press operations requiring more than 1 operator, separate 2-hand controls shall be provided for each operator and shall be designed to require concurrent applications of all operator's controls to activate the slide. The removal of a hand from any control button shall cause the slide to stop.

(b) Each 2-hand control that is used as a point of operation device shall be operated in the single-stroke mode only.

(c) When hand-in-die loading or unloading is used, the safety distance (Ds) between each 2-hand control device and the point of operation shall be greater than the distance determined by the formula prescribed in subrule (3)(e) of this rule.

(d) The position of the 2-hand controls shall be established and fixed in accordance with the provisions of subrule (1)(d) of this rule or subdivision (c) of this subrule, whichever shall apply. Only the supervisor or safety engineer may authorize relocating the controls.

(8) The 2-hand trip device shall protect the operator as prescribed in subrule (1)(d) of this rule. The device shall conform as follows:

(a) When used in press operations that require more than 1 operator, separate 2-hand trips shall be provided for each operator and shall be designed to require concurrent application of all operator's controls to activate the slide.

(b) Each 2-hand trip shall meet the construction requirements of R 408.12434.

(c) The safety distance (**D(m)**) (~~Dm~~) between the 2-hand trip and the point of operation shall be greater than the distance determined by the following formula:

$$D(m) = 63 \text{ inches/second} \times T(m);$$

where:

$$D(m) = \text{minimum safety distance (inches); } 63 \text{ inches/second} = \text{hand speed constant};$$

And

$$T(m) = \text{the maximum time the press takes for the die closure after it has been tripped (seconds). For full revolution clutch presses with only one engaging point } T(m) \text{ is equal to the time necessary for one and one-half revolutions of the crankshaft. For full revolution clutch presses with more than one engaging point, } T(m) \text{ shall be calculated as follows:}$$

$$T(m) = [1/2 + (1 \text{ divided by number of engaging points per revolution})] \times \text{time necessary to complete one revolution of the crankshaft (seconds).}$$

~~Dm = 63 inches/second x Tm; where:~~

~~Dm = minimum safety distance(inches); 63 inches/second = hand speed constant; and~~

~~Tm = the maximum time the press takes for the die closure after it has been tripped(seconds). For full revolution clutch presses that have only 1 engaging point, Tm is equal to the time necessary for 1 1/2 revolutions of the crankshaft. For full revolution clutch presses that have more than 1 engaging point, Tm shall be calculated as follows:~~

~~1 time necessary to complete 1 revolution of the Tm = 1/2 + Number of X crankshaft engaging(seconds) points per revolution~~

(d) Two-hand trips shall be established and fixed and only a supervisor or safety engineer may authorize their relocation.

R 408.12464 Hand feeding tools.

Rule 2464. Hand feeding tools are intended for placing materials in, and removing materials from, the press. Hand feeding tools are not a point of operation guard or protection device, and shall not be used in lieu of the "guards" or devices required in this **standard. part.**

R 408.12471 Dies; employer duties generally.

Rule 2471. An employer shall do all of the following:

- (a) Use dies and operating methods designed to control or eliminate hazards to operating personnel.
- (b) Furnish, and enforce the use of, a hand tool for freeing and removing stuck work or scrap pieces from the die so that an employee need not reach into the point of operation for such purposes.
- (c) Guard feed points, shuttle mechanisms, or other pinch points in accordance with **General Industry Safety Standard Part 1 "General Provisions," as referenced in R 408.12402.** ~~the provisions of rule 34 of Part 1. General Rules of the general industry safety standards rules, being R 408.10034 of the Michigan Administrative Code.~~

R 408.12475 Tonnage, stroke, and weight requirements.

Rule 2475. All dies shall be **according to the following:**

- (a) Stamped with the tonnage and stroke requirements, or the requirements may be recorded if the records are readily available to the die setter.
- (b) Stamped to indicate upper die weight when necessary for air counterbalance pressure adjustment.
- (c) Stamped to indicate complete die weight when handling equipment may become overloaded.

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**PROPOSED ADMINISTRATIVE RULES**

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS ~~CONSUMER AND INDUSTRY SERVICES~~

**DIRECTOR'S OFFICE ~~BUREAU OF SAFETY AND REGULATION~~**

**GENERAL INDUSTRY SAFETY STANDARDS COMMISSION**

Filed with the Secretary of State on

Proposed June 27, 2016

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under ~~these~~ ~~those~~ sections become effective 7 days after filing with the Secretary of State.

**(By authority conferred on the director of the department of licensing and regulatory affairs by sections 16 and 21 of 1974 PA 154, MCL 408.1016 and 408.1021, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030)**  
~~(By authority conferred on the general industry safety standards commission by sections 16 and 21 of Act No. 154 of the Public Acts of 1974, as amended, being SS408.1016 and 408.1021 of the Michigan Compiled Laws)~~

R 408.12501 of the Michigan Administrative Code is amended, and R 408.12505 and R 408.12510 are added, as follows:

**PART 25. MANLIFTS**

R 408.12501 Adoption of federal ~~standard. regulations; amendments.~~

Rule 2501. (1) The **federal Occupational Safety and Health Administration (OSHA) regulation 29 C.F.R. §1910.68, “Manlifts,” as amended December 14, 2007, is adopted by reference in these rules.** ~~provisions of manlifts, except as amended in this rule, are adopted by reference in these rules and may be inspected and obtained at the Lansing office of the Michigan Department of Consumer and Industry Services, Safety Standards Division, 7150 Harris Drive, Box 30643, Lansing, Michigan 48909, at no charge as of the time of adoption of these rules. A copy of 29 §C.F.R. 1910.68 is available, at no charge, from the United States Department of Labor, 801 South Waverly Road, Room 306, Lansing, Michigan 48917.~~

~~(2) The provisions of 29 C.F.R. §1910.68 are amended as follows:~~

~~(a) A reference to ANSI standard 12.1-1967, safety requirements for floor and wall openings, or a reference to 29 C.F.R. §1910, subpart D, is deemed to be a reference to general industry safety standard Part 2. Floor and Wall Openings, Stairways, and Skylights, being R 408.10201 et seq. of the Michigan Administrative Code.~~

~~(b) A reference to ANSI standard A14.3-1956, safety code for fixed ladders, or a reference to 29 C.F.R. §1910, subpart D, is deemed to be a reference to general industry safety standard Part 3. Fixed Ladders, being R 408.10301 et seq. of the Michigan Administrative Code.~~

~~(c) A reference to ANSI standard B15.1-1958, safety code for mechanical power transmission apparatus, or a reference to 29 C.F.R. §1910, subpart O, is deemed to be a reference to general industry safety standard Part 7. Guards for Power Transmission, being R 408.10701 et seq. of the Michigan Administrative Code.~~

~~(d) A reference to NFPA 70-1971, ANSI C1-1971, or revision of C1-1968 is deemed to be a reference to general industry safety standard Part 39. Design Safety Standards for Electrical Systems and Part 40. Electrical Safety Related Work Practices, being R 408.13901 et seq. and R 408.14001 et seq., respectively, of the Michigan Administrative Code.~~

**(2) The availability information for the OSHA standard adopted in these rules is in R 408.41205 and MIOSHA standards referenced in these rules is in R 408.12510.**

**(3) A reference to any of the following means General Industry Safety Standard Part 3 “Fixed Ladders:”**

**(a) ANSI standard A14.3 “Safety Code For Fixed Ladders,” 1956 edition.**

**(b) 29 C.F.R. §1910, Subpart D “Walking-Working Surfaces.”**

**(c) 29 C.F.R. §1910.27, “Fixed Ladders.”**

**(3) A reference to ANSI standard A90.1 “Manlifts,” 1969 edition, means this standard.**

**(4) A reference to either of the following means General Industry Safety Standard Part 7 “Guards For Power Transmission:”**

**(a) ANSI standard B15.1 “Safety Code For Mechanical Power Transmission Apparatus,” 1958 edition.**

**(b) 29 C.F.R. §1910, Subpart O, “Machinery and Machine Guarding.”**

**(5) A reference to 29 C.F.R. §1910, Subpart S, “Electrical,” means both of the following:**

**(a) General Industry Safety Standard Part 39 “Design Safety Standards for Electrical Systems.”**

**(b) General Industry Safety Standard Part 40 “Safety-Related Work Practices.”**

**(6) A reference to 29 C.F.R. §1910.23, “Guarding floor and wall openings and holes,” means General Industry Safety Standard Part 2 “Floor and Wall Openings, Stairways and Skylights.”**

**(7) The adopted federal regulations shall have the same force and effect as a rule promulgated under the Michigan Occupational Safety and Health Act (MIOSHA), 1974 PA 154, MCL 408.1001 to 408.1094.**

#### **R 408.12505 Availability of OSHA adopted standard.**

**Rule 2505. (1) The standard adopted in these rules is available from the United States Department of Labor, Occupational Safety and Health Administration website: [www.osha.gov](http://www.osha.gov), at no charge, as of the time of adoption of these rules.**

**(2) The standard adopted in these rules is available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.**

**(3) The standard adopted in these rules may be obtained from the publisher or may be obtained from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143, at the cost charged in this rule, plus \$20.00 for shipping and handling.**

#### **R 408.12510 Availability of MIOSHA referenced standards.**

**Rule 2510. The following Michigan Occupational Safety and Health Administrative standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the**

internet at website: [www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(a) General Industry Safety Standard Part 2 “Floor and Wall Openings, Stairways and Skylights,” R 408.10201 to R 408.10241.

(b) General Industry Safety Standard Part 3 “Fixed Ladders,” R 408.10301 to R 408.10372.

(c) General Industry Safety Standard Part 7 “Guards For Power Transmission,” R 408.10701 to R 408.10765.

(d) General Industry Safety Standard Part 39 “Design Safety Standards for Electrical Systems,” R 408.13901 to R 408.13905.

(e) General Industry Safety Standard Part 40 “Safety-Related Work Practices,” R 408.14001 to R 408.14009.

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**PROPOSED ADMINISTRATIVE RULES**

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**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS ~~CONSUMER AND INDUSTRY~~  
SERVICES**

**~~DIRECTOR'S OFFICE BUREAU OF SAFETY AND REGULATION~~**

**~~OCCUPATIONAL HEALTH STANDARDS COMMISSION~~**

**~~OCCUPATIONAL NOISE EXPOSURE~~**

Filed with the Secretary of State on

These rules take effect immediately upon filing with the Secretary of State unless adopted under **section sections 33, 44, or 45a(6) of 1969 PA 306**. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the **director of the department of licensing and regulatory affairs by sections 14 and 24 of 1974 PA 154, MCL 408.1014 and MCL 408.1024, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030**) ~~occupational health standards commission by section 24 of Act No. 154 of the Public Acts of 1974, as amended, being S408.1024 of the Michigan Compiled Laws)~~

R 325.60102, R 325.60103, R 325.60104, R 325.60105, R 325.60107, R 325.60108, R 325.60109, R 325.60110, R 325.60111, R 325.60112, R 325.60115, R 325.60117, R 325.60118, R 325.60119, R 325.60120, R 325.60122, R 325.60123, R 325.60124, R 325.60125, and R 325.60126 of the Michigan Administrative Code are amended, R 325.60101a and R 325.60122a are added, and R 325.60127 and R 325.60128 are rescinded, as follows:

**PART 380 OCCUPATIONAL NOISE EXPOSURE IN GENERAL INDUSTRY**

**R 325.60101a Adopted and referenced standards.**

**Rule 1a. (1) The following standards are adoption by reference in these rules and are available from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112, telephone number 1-800-854-7179, website: [www.global.ihc.com](http://www.global.ihc.com), at a cost as of the time of adoption of these rules, as stated in this subrule:**

**(a) American National Standard Institute ANSI S1.4 “American National Standard Electroacoustics - Sound Level Meters,” 1983 edition. Cost: \$120.00.**

**(b) ANSI S1.11 “American National Standard Specification For Octave-Band And Fractional-Octave-Band Analog And Digital Filters,” 1986 edition. Cost: \$ 120.00.**

**(c) ANSI S3.6 “American National Standard Specification For Audiometers,” 1969 edition. Cost: \$ 25.00.**

**(d) ANSI S3.6 “American National Standard Specification For Audiometers,” 1989 edition. Cost: \$ 120.00.**

**(2) The National Institute for Occupational Safety and Health standard NIOSH 76-120 “List of Personal Hearing Protectors and Attenuation Data” NTIS Accession number: PB-267461, is**

adoption by reference in these rules and is available from the National Technical Information Service, 5301 Shawnee Road, Alexandria, Virginia 22312, telephone number: 1-800-553-6847, website: [orders@ntis.gov](mailto:orders@ntis.gov), at a cost as of the time of adoption of this rule of \$33.00.

(3) The standards adopted in these rules are available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.

(4) The standards adopted in these rules may be obtained from the publisher or may be obtained from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143, plus \$20.00 for shipping and handling.

(5) This Michigan occupational safety and health (MIOSHA) standard is referenced in these rules, Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," R 325.3451 to R 325.3476. Up to 5 copies of this standard may be obtained at no charge from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at website: [www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(6) The appendices are informational only and are not intended to create any additional obligations or requirements not otherwise imposed or to detract from any established obligations or requirements.

R 325.60102 Definitions.

Rule 2. ~~As used in these rules:~~

(1) ~~(a)~~ "Action level" means an 8-hour, time-weighted average noise exposure of 85 decibels measured on the A-scale, slow response, or equivalently, a dose of 50%.

(2) ~~(b)~~ "Audiogram" means a chart, graph, or table resulting from an audiometric test showing an individual's hearing threshold levels as a function of frequency.

(3) ~~(c)~~ "Audiologist" means a professional who specializes in the study and rehabilitation of hearing and who is certified by the American Speech-Language-Hearing Association ~~speech, hearing, and language association~~ or licensed by a state board of examiners.

(4) ~~(d)~~ "Baseline audiogram" means the audiogram against which future audiograms are compared.

(5) "Criterion sound level" means a sound level of 90 decibels.

(6) ~~(e)~~ "Decibel" or "dB" means a unit of measurement of sound pressure level.

(7) ~~(f)~~ "Hertz" or "Hz" means a unit of measurement of frequency and is numerically equal to cycles per second.

(8) ~~(g)~~ "Medical pathology" means a condition or disease affecting the ear which should be treated by a physician specialist.

(9) ~~(h)~~ "Noise dose" means the ratio, expressed as a percentage, of the time integral, over a stated time or event, of the 0.6 power of the measured, SLOW, exponential time-averaged, squared A-weighted sound pressure and the product of the criterion duration (8 hours) and the 0.6 power of the squared sound pressure corresponding to the criterion sound level (90 dB).

(10) ~~(i)~~ "Noise dosimeter" means an instrument that integrates a function of sound pressure over a period of time in such a manner that it directly indicates a noise dose.

(11) ~~(j)~~ "Otolaryngologist" means a licensed physician specializing in the diagnosis and treatment of disorders of the ear, nose, and throat.

(12) ~~(k)~~ "Representative exposure" means the measurement of an employee's noise dose or 8-hour, time-weighted average noise exposure that the employer deems to be typically equivalent of the exposures of other employees in the workplace.

(13) ~~(l)~~ "Sound level" means 10 times the common logarithm of the ratio of the square of the measured A-weighted sound pressure to the square of the standard reference pressure of 20 micropascals and is expressed in units of dBA.

(14) ~~(m)~~ "Sound level meter" means an instrument for the measurement of sound level.

(15) ~~(n)~~ "Standard threshold shift" means a change in the hearing threshold relative to the baseline audiogram of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

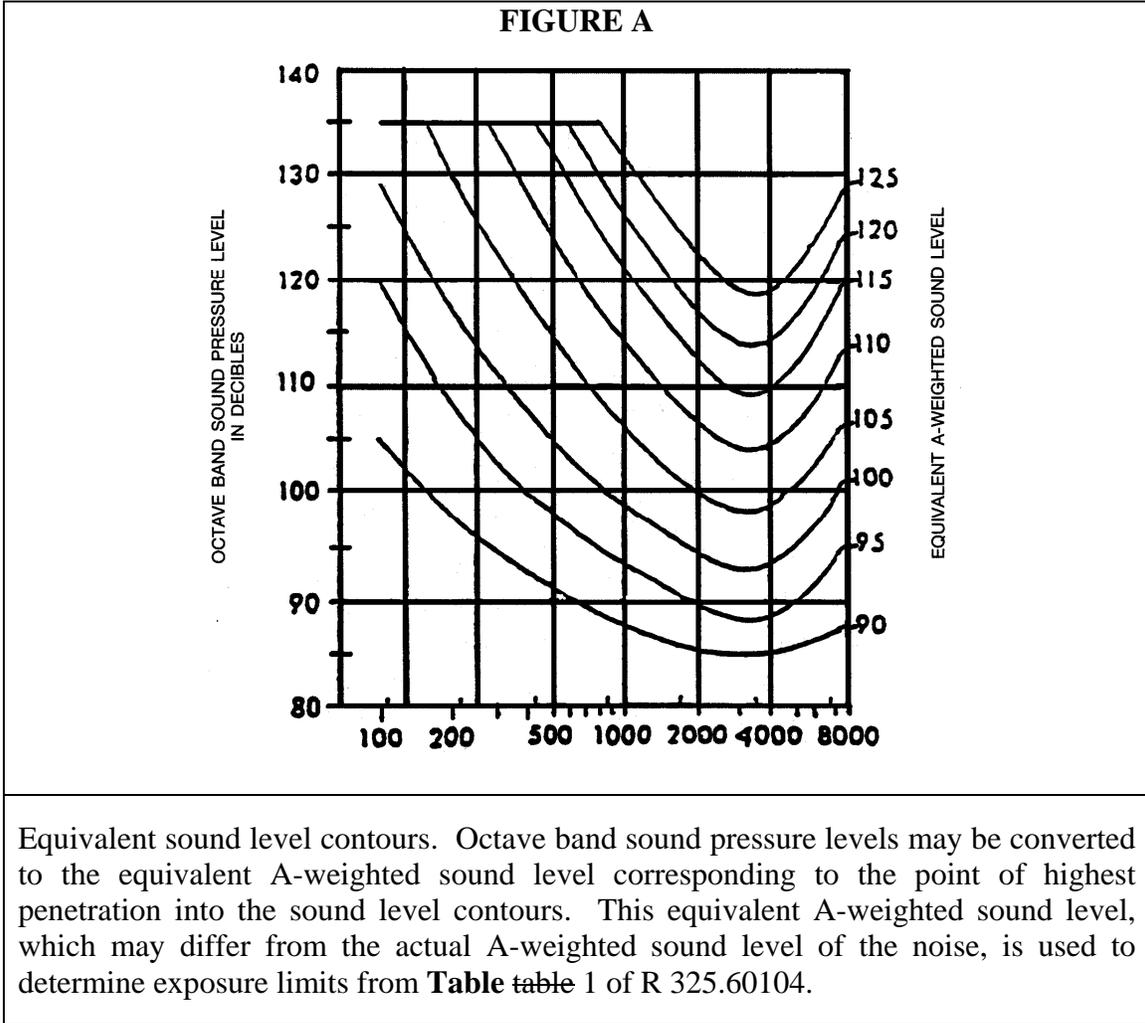
(16) ~~(o)~~ "Time-weighted average sound level" means that sound level which, if constant over an 8-hour exposure, would result in the same noise dose as is measured.

(17) ~~(p)~~ "TWA" means time-weighted average.

R 325.60103 Protection from noise exposure.

Rule 3. (1) Protection against the effects of noise exposure shall be provided when the sound levels exceed those shown in ~~Table table~~ 1 of R 325.60104 when measured on the A scale of a standard sound level meter at slow response. If noise levels are determined by octave band analysis, the equivalent A-weighted sound level may be determined as shown in ~~Figure figure~~ A.

(2) Figure A reads as follows:



R 325.60104 Permissible noise exposure; noise controls.

Rule 4. (1) If employees are subjected to sound exceeding the levels listed in **Table table 1**, feasible administrative or engineering controls shall be utilized. If the controls fail to reduce sound levels within the levels listed in **Table table 1**, personal protective equipment shall be provided and used to reduce employee noise exposure within those levels listed in **Table table 1**.

(2) Table 1 reads as follows:

<b>TABLE 1 PERMISSIBLE NOISE EXPOSURES<sup>1</sup></b>	
<b>Duration per day, hours</b>	<b>Sound level dBA, slow response</b>
<b>8</b>	<b>90</b>
<b>6</b>	<b>92</b>
<b>4</b>	<b>95</b>
<b>3</b>	<b>97</b>
<b>2</b>	<b>100</b>
<b>1 1/2</b>	<b>102</b>
<b>1</b>	<b>105</b>
<b>1/2</b>	<b>110</b>
<b>1/4 or less</b>	<b>115</b>
<p><sup>1</sup> When the daily noise exposure is composed of 2 or more periods of noise exposure of different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of <math>C(1)/T(1) + C(2)/T(2) + \dots + C(n)/T(n)</math> exceeds unity, then the mixed exposure shall be considered to exceed the limit value. C(n) indicates the total time of exposure at a specified noise level, and T(n) indicates the total time of exposure permitted at that level. Exposure to impulsive or impact noise should not exceed 140 dB peak sound pressure level.</p>	

TABLE 1  
Permissible Noise Exposures<sup>1</sup>

---

Duration Per Day, Sound Level dBA,  
Hours Slow Response

---

8-90  
6-92  
4-95  
3-97  
2-100  
1 1/2-102  
1-105  
1/2-110  
1/4 or less-115

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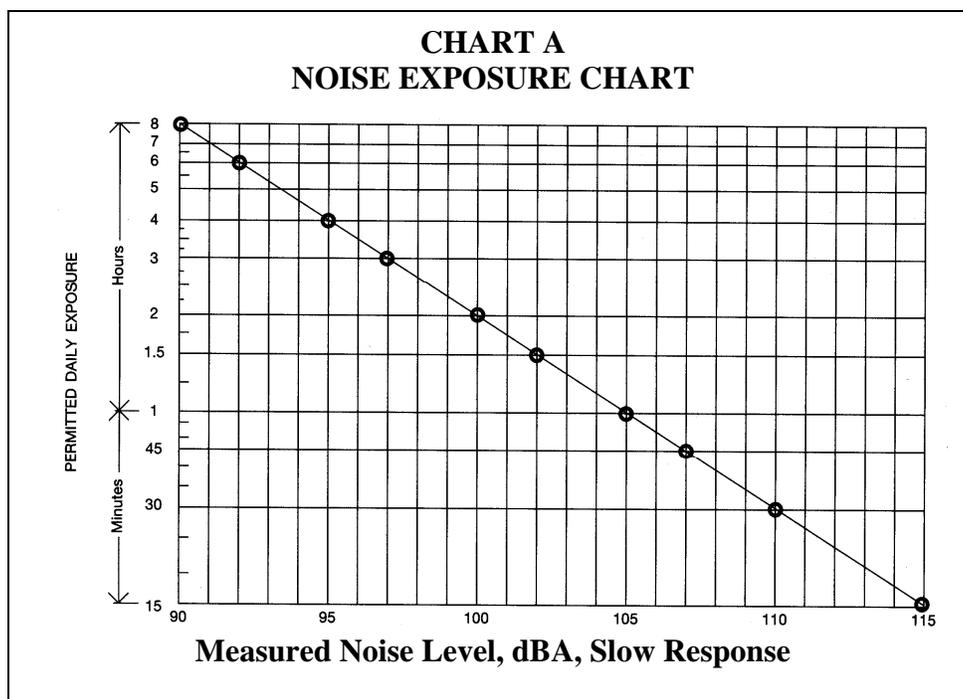
<sup>1</sup>When the daily noise exposure is composed of 2 or more periods of noise exposure of different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of  $C1/T1 + C2/T2 \dots Cn/Tn$  exceeds unity, then the mixed exposure shall be considered to exceed the limit value.

~~C indicates the total time of exposure at a specified noise level, and T indicates the total time of exposure permitted at that level.~~

R 325.60105 Determination of permitted daily exposure time.

Rule 5. (1) If a noise level is between 2 listed permissible noise levels prescribed by ~~Table table~~ 1 of R 325.60104(2), ~~Chart-chart~~ A shall be used to determine the permitted daily exposure time. In applying ~~Chart chart~~ A, measured noise levels shall be taken to the nearest whole number.

(2) Chart A reads as follows:



R 325.60107 Hearing conservation program.

Rule 7. (1) The employer shall administer a continuing, effective hearing conservation program, as described in R 325.60108 to R 325.60127, when employee noise exposures equal or exceed the action level.

(2) For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with the provisions of R 325.60110 and ~~Table table~~ 2 and without regard to any attenuation provided by the use of personal protective equipment.

R 325.60108 Noise monitoring program.

Rule 8. (1) When information indicates that any employee's exposure may equal or exceed the action level, the employer shall develop and implement a **noise-monitoring** ~~noise-monitoring~~ program with all of the following characteristics:

(a) The noise monitoring strategy shall be designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protectors, if required.

(b) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse or impact noise make area monitoring generally inappropriate, the

employer shall use representative personal monitoring to comply with the monitoring requirements of this rule, unless the employer can show that area monitoring produces equivalent results.

(c) All continuous, intermittent, and impulse or impact sound levels from 80 dBA to 130 dBA shall be integrated into the noise measurements.

(d) Instruments used to measure employee noise exposure shall be calibrated to ensure measurement accuracy.

(2) Noise monitoring shall be repeated when a change in production, process, equipment, or controls increases noise exposure to the extent **that either of the follow apply: that additional employees may be exposed at or above the action level or to the extent that the attenuation provided by hearing protectors being used by employees may be rendered inadequate to meet the requirements of R 325.60122.**

**(a) Additional employees may be exposed at or above the action level.**

**(b) The attenuation provided by hearing protectors being used by employees may be rendered inadequate to meet the requirements of R 325.60122.**

R 325.60109 Employee observation and notification.

Rule 9. (1) The employer shall provide affected employees or their representatives an opportunity to observe any noise measurements conducted pursuant to the provisions of R 325.60108.

(2) The employer shall notify each employee exposed at or above the action level of the results of the monitoring pertaining to that employee.

R 325.60110 Noise exposure determination.

Rule 10. (1) Exposure measurements shall accurately reflect employee exposure.

(2) All continuous, intermittent, and impulsive sound levels from 80 dBA to 130 dBA shall be integrated into the computation.

(3) An employee's noise dose shall be computed using **Table table 2** as follows:

(a) When the sound level, L, is constant over the entire work shift, the noise dose, D, in percent, is given by:  $D = 100 C/T$ ; where C is the total length of the work period in hours, and T is the reference duration corresponding to the measured sound level, L, as given in **Table table 2**, or by the formula shown as a footnote to that table.

(b) When the work shift noise exposure is composed of 2 or more periods of noise at different levels, the total noise dose for the workday is given by:

$D = 100(C(1)/T(1) + C(2)/T(2) + \dots + C(n)/T(n))$
<b>where C(n) indicates the total time of exposure at a specific noise level, and T(n) indicates the reference duration for that level as given by Table 2.</b>

~~$D = 100(C1/T1 + C2/T2 + \dots + Cn/Tn);$~~

~~where C is the actual total time of exposure at a measured noise level, L, and T is the reference duration for that level as given in table 2.~~

(4) Table 2 reads as follows:

**TABLE 2**

<b>A-weighted sound level, L (decibel)</b>	<b>Reference duration, T (hour)</b>	<b>A-weighted sound level, L (decibel)</b>	<b>Reference duration, T (hour)</b>
80	32	106	0.87
81	27.9	107	0.76
82	24.3	108	0.66
83	21.1	109	0.57
84	18.4	110	0.5
85	16	111	0.44
86	13.9	112	0.38
87	12.1	113	0.33
88	10.6	114	0.29
89	9.2	115	0.25
90	8	116	0.22
91	7	117	0.19
92	6.1	118	0.16
93	5.3	119	0.14
94	4.6	120	0.125
95	4	121	0.11
96	3.5	122	0.095
97	3	123	0.082
98	2.6	124	0.072
99	2.3	125	0.063
100	2	126	0.054
101	1.7	127	0.047
102	1.5	128	0.041
103	1.3	129	0.036
104	1.1	130	0.031
105	1		

In the above Table, the reference duration, T, is computed by:

$$T = \frac{8}{2^{\left(\frac{L-90}{5}\right)}}$$

where L is the measured A-weighted sound level.

TABLE 2

~~A-weighted Reference A-weighted Reference  
Sound Level Duration, Sound Level Duration,  
L(decibel) T(hour) L(decibel) T(hour)~~

<del>80</del>	<del>32.0</del>	<del>106</del>	<del>0.87</del>
<del>81</del>	<del>27.9</del>	<del>107</del>	<del>0.76</del>
<del>82</del>	<del>24.3</del>	<del>108</del>	<del>0.66</del>
<del>83</del>	<del>21.1</del>	<del>109</del>	<del>0.57</del>
<del>84</del>	<del>18.4</del>	<del>110</del>	<del>0.5</del>
<del>85</del>	<del>16.0</del>	<del>111</del>	<del>0.44</del>
<del>86</del>	<del>13.9</del>	<del>112</del>	<del>0.38</del>
<del>87</del>	<del>12.1</del>	<del>113</del>	<del>0.33</del>
<del>88</del>	<del>10.6</del>	<del>114</del>	<del>0.29</del>
<del>89</del>	<del>9.2</del>	<del>115</del>	<del>0.25</del>
<del>90</del>	<del>8.0</del>	<del>116</del>	<del>0.22</del>
<del>91</del>	<del>7.0</del>	<del>117</del>	<del>0.19</del>
<del>92</del>	<del>6.1</del>	<del>118</del>	<del>0.16</del>
<del>93</del>	<del>5.3</del>	<del>119</del>	<del>0.14</del>
<del>94</del>	<del>4.6</del>	<del>120</del>	<del>0.125</del>
<del>95</del>	<del>4.0</del>	<del>121</del>	<del>0.11</del>
<del>96</del>	<del>3.5</del>	<del>122</del>	<del>0.095</del>
<del>97</del>	<del>3.0</del>	<del>123</del>	<del>0.082</del>
<del>98</del>	<del>2.6</del>	<del>124</del>	<del>0.072</del>
<del>99</del>	<del>2.3</del>	<del>125</del>	<del>0.063</del>
<del>100</del>	<del>2.0</del>	<del>126</del>	<del>0.054</del>
<del>101</del>	<del>1.7</del>	<del>127</del>	<del>0.047</del>
<del>102</del>	<del>1.5</del>	<del>128</del>	<del>0.041</del>
<del>103</del>	<del>1.3</del>	<del>129</del>	<del>0.036</del>
<del>104</del>	<del>1.1</del>	<del>130</del>	<del>0.031</del>
<del>105</del>	<del>1.0</del>		

~~In the above Table, table, the reference duration, T, is computed by:~~

$$T = \frac{8}{2^{\left(\frac{L-90}{5}\right)}}$$

~~where L is the measured A-weighted sound level.~~

R 325.60111 Determining TWA sound levels.

Rule 11. (1) Time-weighted average (TWA) sound levels may be computed from the measured or calculated dose by means of the formula:

$$TWA = 16.61 \log_{10} \frac{D}{12.5T} + 90$$

where D is the dose in percentage,  
and T is the time in hours over which the dose was determined.

(2) An 8-hour TWA sound level can be calculated from the formula in subrule (1) of this rule by letting T equal 8. Thus,

$$TWA = 16.61 \log_{10} \frac{D}{100} + 90$$

Table 3 gives the 8-hour, TWA sound level values for a wide range of dose values.

(3) Table 3 reads as follows:

<b>TABLE 3 EIGHT-HOUR TWA SOUND LEVELS</b>							
<b>Dose (in percent)</b>	<b>TWA Sound Level (in dBA)</b>	<b>Dose (in percent)</b>	<b>TWA Sound Level (in dBA)</b>	<b>Dose (in percent)</b>	<b>TWA Sound Level (in dBA)</b>	<b>Dose (in percent)</b>	<b>TWA Sound Level (in dBA)</b>
10	73.4	104	90.3	260	96.9	640	103.4
15	76.3	105	90.4	270	97.2	650	103.5
20	78.4	106	90.4	280	97.4	660	103.6
25	80.0	107	90.5	290	97.7	670	103.7
30	81.3	108	90.6	300	97.9	680	103.8
35	82.4	109	90.6	310	98.2	690	103.9
40	83.4	110	90.7	320	98.4	700	104.0
45	84.2	111	90.8	330	98.6	710	104.1

**TABLE 3  
EIGHT-HOUR TWA SOUND LEVELS**

<b>Dose (in percent)</b>	<b>TWA Sound Level (in dBA)</b>						
50	85.0	112	90.8	340	98.8	720	104.2
55	85.7	113	90.9	350	99.0	730	104.3
60	86.3	114	90.9	360	99.2	740	104.4
65	86.9	115	91.1	370	99.4	750	104.5
70	87.4	116	91.1	380	99.6	760	104.6
75	87.9	117	91.1	390	99.8	770	104.7
80	88.4	118	91.2	400	100.0	780	104.8
81	88.4	119	91.3	410	100.2	790	104.9
82	88.6	120	91.3	420	100.4	800	105.0
83	88.7	125	91.6	430	100.5	810	105.1
84	88.7	130	91.9	440	100.7	820	105.2
85	88.8	135	92.4	450	100.8	830	105.3
86	88.9	140	92.7	460	101.0	840	105.4
87	89.0	145	92.9	470	101.2	850	105.4
88	89.1	150	93.2	480	101.3	860	105.5
89	89.2	155	93.4	490	101.5	870	105.6
90	89.2	160	93.6	500	101.6	880	105.7
91	89.3	165	93.6	510	101.8	890	105.8
92	89.4	170	93.8	520	101.9	900	105.8
93	89.5	175	94.0	530	102.0	910	105.9
94	89.6	180	94.2	540	102.2	920	106.0
95	89.6	185	94.4	550	102.3	930	106.1
96	89.7	190	94.6	560	102.4	940	106.2
97	89.8	195	94.8	570	102.6	950	106.2
98	89.9	200	95.0	580	102.7	960	106.3
99	89.9	210	95.4	590	102.8	970	106.4
100	90.0	220	95.7	600	102.9	980	106.5
101	90.1	230	96.0	610	103.0	990	106.5
102	90.1	240	96.3	620	103.2	999	106.6

<p style="text-align: center;"><b>TABLE 3</b> <b>EIGHT-HOUR TWA SOUND LEVELS</b></p>							
Dose (in percent)	TWA Sound Level (in dBA)	Dose (in percent)	TWA Sound Level (in dBA)	Dose (in percent)	TWA Sound Level (in dBA)	Dose (in percent)	TWA Sound Level (in dBA)
103	90.2	250	96.6	630	103.3	1000	106.6

Table-3  
Eight-hour TWA Sound Levels

Dose(in percent)	TWA Sound Level(in dBA)	Dose(in percent)	TWA Sound Level(in dBA)
10	73.4	420	100.4
15	76.3	430	100.5
20	78.4	440	100.7
25	80.0	450	100.8
30	81.3	460	101.0
35	82.4	470	101.2
40	83.4	480	101.3
45	84.2	490	101.5
50	85.0	500	101.6
55	85.7	510	101.8
60	86.3	520	101.9
65	86.9	530	102.0
70	87.4	540	102.2
75	87.9	550	102.3
80	88.4	560	102.4
85	88.8	570	102.6
90	89.2	580	102.7
95	89.6	590	102.8
100	90.0	600	102.9
105	90.4	610	103.0
110	90.7	620	103.2
115	91.1	630	103.3
120	91.3	640	103.4
125	91.6	650	103.5
130	91.9	660	103.6
135	92.4	670	103.7
140	92.7	680	103.8
145	92.9	690	103.9
150	93.2	700	104.0
155	93.4	710	104.1

160	93.6	720	104.2
165	93.6	730	104.3
170	93.8	740	104.4
175	94.0	750	104.5
180	94.2	760	104.6
185	94.4	770	104.7
190	94.6	780	104.8
195	94.8	790	104.9
200	95.0	800	105.0
210	95.4	810	105.1
220	95.7	820	105.2
230	96.0	830	105.3
240	96.3	840	105.4
250	96.6	850	105.4
260	96.9	860	105.5
270	97.2	870	105.6
280	97.4	880	105.7
290	97.7	890	105.8
300	97.9	900	105.8
310	98.2	910	105.9
320	98.4	920	106.0
330	98.6	930	106.1
340	98.8	940	106.2
350	99.0	950	106.2
360	99.2	960	106.3
370	99.4	970	106.4
380	99.6	980	106.5
390	99.8	990	106.5
400	100.0	999	106.6
410	100.2	1000	106.6

R 325.60112 Audiometric testing program.

Rule 12. (1) The employer shall establish and maintain an audiometric testing program as provided in this rule by making audiometric testing available to all employees whose exposures equal or exceed the action level.

(2) The program shall be provided at no cost to employees.

(3) Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other physician, or by a technician who is certified by the council of accreditation in occupational hearing conservation or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining, and checking calibration and proper functioning of the audiometers being used. A technician who operates microprocessor audiometers does not need to be certified. A technician who performs audiometric tests shall be responsible to an audiologist, otolaryngologist, or physician.

(4) All audiograms obtained pursuant to the provisions of R 325.60113 and R 325.60114 shall meet the applicable requirements of R 325.60119.

R 325.60115 Evaluation of audiogram.

Rule 15. (1) Each employee's annual audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and if a standard threshold shift, as defined by **R 325.60102(15)**, ~~R 325.60102(n)~~, has occurred. This comparison may be done by a technician.

(2) If the annual audiogram shows that the employee has suffered a standard threshold shift, the employer may obtain a retest within 30 days and consider the results of the retest as the annual audiogram.

(3) An audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. The employer shall provide ~~all of the following information~~ to the person **performing this evaluation the following information:** ~~who performs the review~~

(a) A copy of the requirements for hearing conservation as set forth in this rule, R 325.60107 to R 325.60114, and R 325.60116 to R 325.60127.

(b) The baseline audiogram and most recent audiogram of the employee to be evaluated.

(c) Measurements of background sound pressure levels in the audiometric test room as required pursuant to the provisions of R 325.60119(5).

(d) Records of audiometer calibrations required pursuant to the provisions of R 325.60120.

R 325.60117 Revised baseline audiograms.

Rule 17. An annual audiogram may be substituted for the baseline audiogram when, in the judgment of the audiologist, otolaryngologist, or physician who is evaluating the audiogram, **either of the following apply:** ~~the standard threshold shift revealed by the audiogram is persistent or the hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.~~

(a) **The standard threshold shift revealed by the audiogram is persistent.**

(b) **The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.**

R 325.60118 Standard threshold shift determination.

Rule 18. (1) In determining whether a standard threshold shift has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level by adjusting the most recent audiogram. If the adjustment is made, the employer shall, for each audiometric test frequency, do **both of the following:**

(a) Determine from ~~Table table~~ **Table 4** the age correction values for the employee as follows:

(i) Find the age at which the most recent audiogram was taken and record the corresponding values of age corrections at 1000 Hz to 6000 Hz.

(ii) Find the age at which the baseline audiogram was taken and record the corresponding values of age corrections at 1000 Hz to 6000 Hz.

(b) Subtract the values found in subdivision (a)(ii) from the values found in subdivision (a)(i). The differences represent that portion of the change in hearing that may be due to aging.

**EXAMPLE: Employee is a 32-year-old male. The audiometric history for the employee's right ear is shown in decibels below.**

Employee's age	Audiometric test frequency (Hz)				
	1000	2000	3000	4000	6000
26	10	5	5	10	5
*27	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
*32	5	10	10	25	20

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32.

The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25.

A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:

Go to Table 4 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram-hearing threshold at 4000 Hz (22). Thus the age corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

(2) Table 4 reads as follows:

TABLE 4
AGE CORRECTION VALUES IN DECIBELS

MALES						FEMALES					
Age	1000 Hz	2000 Hz	3000 Hz	4000 Hz	6000 Hz	1000 Hz	2000 Hz	3000 Hz	4000 Hz	6000 Hz	Age
20 or less	5	3	4	5	8	7	4	3	3	6	20 or less
21	5	3	4	5	8	7	4	4	3	6	21
22	5	3	4	5	8	7	4	4	4	6	22
23	5	3	3	6	9	7	5	4	4	7	23
24	5	3	5	6	9	7	5	4	4	7	24
25	5	3	5	7	10	8	5	4	4	7	25
26	5	4	5	7	10	8	5	5	4	8	26
27	5	4	6	7	11	8	5	5	5	8	27
28	6	4	6	8	11	8	5	5	5	8	28
29	6	4	6	8	12	8	5	5	5	9	29
30	6	4	6	9	12	8	6	5	5	9	30
31	6	4	7	9	13	8	6	6	5	9	31
32	6	5	7	10	14	9	6	6	6	10	32
33	6	5	7	10	14	9	6	6	6	10	33
34	6	5	8	11	15	9	6	6	6	10	34
35	7	5	8	11	15	9	6	7	7	11	35
36	7	5	9	12	16	9	7	7	7	11	36
37	7	6	9	12	17	9	7	7	7	12	37
38	7	6	9	13	17	10	7	7	7	12	38
39	7	6	10	14	18	10	7	8	8	12	39
40	7	6	10	14	19	10	7	8	8	13	40
41	7	6	10	14	20	10	8	8	8	13	41
42	8	7	11	16	20	10	8	9	9	13	42
43	8	7	12	16	21	11	8	9	9	14	43
44	8	7	12	17	22	11	8	9	9	14	44
45	8	7	13	18	23	11	8	10	10	15	45
46	8	8	13	19	24	11	9	10	10	15	46
47	8	8	14	19	24	11	9	10	11	16	47
48	9	8	14	20	25	12	9	11	11	16	48
49	9	9	15	21	26	12	9	11	11	16	49

TABLE 4											
AGE CORRECTION VALUES IN DECIBELS											
MALES						FEMALES					
Age	1000 Hz	2000 Hz	3000 Hz	4000 Hz	6000 Hz	1000 Hz	2000 Hz	3000 Hz	4000 Hz	6000 Hz	Age
50	9	9	16	22	27	12	10	11	12	17	50
51	9	9	16	23	28	12	10	12	12	17	51
52	9	10	17	24	29	12	10	12	13	18	52
53	9	10	18	25	30	13	10	13	13	18	53
54	10	10	18	26	31	13	11	13	14	19	54
55	10	11	19	27	32	13	11	14	14	19	55
56	10	11	20	28	34	13	11	14	15	20	56
57	10	11	21	29	35	13	11	15	15	20	57
58	10	12	22	31	36	14	12	15	16	21	58
59	11	12	22	32	37	14	12	16	16	21	59
60 or older	11	13	23	33	38	14	12	16	17	22	60 or older

Age Correction Values in Decibels											
Age	Males					Females					Age
	1000 Hz	2000 Hz	3000 Hz	4000 Hz	6000 Hz	1000 Hz	2000 Hz	3000 Hz	4000 Hz	6000 Hz	
20 or less	5	3	4	5	8	7	4	3	3	3	20 or less
21	5	3	4	5	8	7	4	4	3	6	21
22	5	3	4	5	8	7	4	4	4	6	22
23	5	4	3	6	9	7	5	4	4	7	23
24	5	3	5	6	9	7	5	4	4	7	24
25	5	3	5	7	10	8	5	4	4	7	25
26	5	4	5	7	10	8	5	5	4	8	26
27	5	4	6	7	11	8	5	5	5	8	27
28	6	4	6	8	11	8	5	5	5	8	28
29	6	4	6	8	12	8	5	5	5	9	29
30	6	4	6	9	12	8	6	5	5	9	30
31	6	4	7	9	13	8	6	6	5	9	31
32	6	5	7	10	14	9	6	6	6	10	32
33	6	5	7	10	14	9	6	6	6	10	33
34	6	5	8	11	15	9	6	6	6	10	34
35	7	5	8	11	15	9	6	7	7	11	35

36	7	5	9	12	16	9	7	7	7	11	36
37	7	6	9	12	17	9	7	7	7	12	37
38	7	6	9	13	17	10	7	7	7	12	38
39	7	6	10	14	18	10	7	8	8	12	39
40	7	6	10	14	19	10	7	8	8	13	40
41	7	6	10	14	20	10	8	8	8	13	41
42	8	7	11	16	20	10	8	9	9	13	42
43	8	7	12	16	21	11	8	9	9	14	43
44	8	7	12	17	22	11	8	9	9	14	44
45	8	7	13	18	23	11	8	10	10	15	45
46	8	8	13	19	24	11	9	10	10	15	46
47	8	8	14	19	24	11	9	10	11	16	47
48	9	8	14	20	25	12	9	11	11	16	48
49	9	9	15	21	26	12	9	11	11	16	49
50	9	9	16	22	27	12	10	11	12	17	50
51	9	9	16	23	28	12	10	12	12	17	51
52	9	10	17	24	29	12	10	12	13	18	52
53	9	10	18	25	30	13	10	13	13	18	53
54	10	10	18	26	31	13	11	13	14	19	54
55	10	11	19	27	32	13	11	14	14	19	55
56	10	11	20	28	34	13	11	14	15	20	56
57	10	11	21	29	35	13	11	15	15	20	57
58	10	12	22	31	36	14	12	15	16	21	58
59	11	12	22	32	37	14	12	16	16	21	59
60 or older	11	13	23	33	38	14	12	16	17	22	60 or older

R 325.60119 Audiometric test requirements.

Rule 19. (1) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies that include, at a minimum, 500, 1000, 2000, 3000, 4000, and 6000 Hz. Tests at each frequency shall be taken separately for each ear.

(2) Audiometric tests shall be conducted with audiometers, **including microprocessor audiometers**, that meet the specifications of, and are maintained and used in accordance with **ANSI S3.6 “American National Standard Specification For Audiometers,” 1989 edition, as adopted in R 325.60101a.** ~~the American national standards institute's specification for audiometers, S3.6-1989, which is adopted in these rules by reference. S3.6-1989 is available for purchase from the Michigan Department of Public Health, Division of Occupational Health, P.O. Box 30195, Lansing, Michigan 48909, or from the American National Standards Institute Incorporated, 1430 Broadway, New York, New York 10018, at a cost as of the time of adoption of these rules of \$45.00.~~

(3) Pulsed-tone audiometers, if used, shall have a tone on-time of not less than 200 milliseconds.

(4) Self-recording audiometers, if used, shall be in compliance with all of the following requirements:

(a) The chart upon which the audiogram is traced shall have lines at positions that correspond to all multiples of 10 dB hearing level within the intensity range spanned by the audiometer. The lines shall be equally spaced and shall be separated by not less than 1/4 of an inch. Additional increments are optional. The audiogram pen tracings shall not be more than 2 dB in width.

(b) It shall be possible to set the stylus manually at the 10 dB increment lines for calibration purposes.

(c) The slewing rate for the audiometer attenuator shall not be more than 6 dB/second, except that an initial slewing rate of more than 6 dB/second is permitted at the beginning of each new test frequency, but only until the second subject response.

(d) The audiometer shall remain at each required test frequency for 30 seconds plus or minus 3 seconds. The audiogram shall be clearly marked at each change of frequency, and the actual frequency change of the audiometer shall not deviate from the frequency boundaries marked on the audiogram by more than plus or minus 3 seconds.

(e) It shall be possible at each test frequency to place a horizontal line segment parallel to the time axis on the audiogram so that the audiometric tracing crosses the line segment not less than 6 times at that test frequency. At each test frequency, the threshold shall be the average of the midpoints of the tracing excursions.

(5) Audiometric examinations shall be administered in a room or booth that has sound pressure levels that do not exceed any of the following:

- (a) 40 dB at 500 Hz center frequency.
- (b) 40 dB at 1000 Hz center frequency.
- (c) 47 dB at 2000 Hz center frequency.
- (d) 57 dB at 4000 Hz center frequency.
- (e) 62 dB at 8000 Hz center frequency.

Sound levels will be determined by a type 1 or type 2 sound level meter and octave-band filter as specified by the requirements of **ANSI S1.4 “American National Standard Electroacoustics - Sound Level Meters,” 1983 edition, and ANSI S1.11 “American National Standard Specification For Octave-Band And Fractional-Octave-Band Analog And Digital Filters,” 1986 edition, as adopted in R 325.60101a.** ~~American national specifications for sound level meters, S1.4-1983, and for octave band and fractional octave band analog and digital filters, S1.11-1986. Both of these American national standards are adopted in these rules by reference and are available from the Michigan Department of Public Health, Division of Occupational Health, P.O. Box 30195, Lansing, Michigan 48909, or from the American National Standards Institute, 1430 Broadway, New York, New York 10018, at a cost as of the time of adoption of these rules of \$44.00 for S1.4-1983 and \$60.00 for S1.11-1986.~~

#### R 325.60120 Audiometer calibration.

Rule 20. (1) The functional operation of the audiometer shall be checked before each day's use by testing a person with known, stable hearing thresholds and by listening to the audiometer's output to make sure that the output is free from distorted or unwanted sounds. Deviations of more than 10 dB shall require an acoustic calibration.

(2) Audiometer calibration shall be checked acoustically at least annually in accordance with all of the following procedures and instructions. **Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check. Deviations of 15 decibels or greater require an exhaustive calibration.**

(a) The equipment that is necessary to perform these measurements is a sound level meter, octave-band filter set, and a **National Bureau of Standards** ~~national bureau of standards~~ 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by **ANSI S3.6 “American National Standard Specification For Audiometers,” 1989 edition, as adopted in R 325.60101a.** ~~the American national standards institute specification for audiometers, S3.6-1989, which is adopted by reference in R 325.60119.~~

(b) Sound pressure output check procedures are as follows:

(i) Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

- (ii) Set the audiometer's hearing threshold level (HTL) dial to 70 dB.
- (iii) Measure the sound pressure level of the tones at each test frequency from 500 Hz to 6000 Hz for each earphone.
- (iv) At each frequency, the readout on the sound level meter shall correspond to the levels in **Table table 5** or **Table table 6**, as appropriate for the type of earphone, in the column entitled "Sound level meter reading."
- (c) Linearity check procedures are as follows:
  - (i) With the earphone in place, set the frequency to 1000 Hz and the HTL dial on the audiometer to 70 dB.
  - (ii) Measure the sound levels in the coupler at each 10-dB decrement from 70 dB to 10 dB, noting the sound level meter reading at each setting.
  - (iii) For each 10-dB decrement on the audiometer, the sound level meter shall indicate a corresponding 10-dB decrease.
  - (iv) This measurement may be made electrically with a voltmeter that is connected to the earphone terminals.
- (d) If a measured sound level deviates from a level in **Table table 5** or **Table table 6** by plus or minus 3 dB at any test frequency between 500 and 3000 Hz, plus or minus 4 dB at 4000 Hz, or plus or minus 5 dB at 6000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviation is **15 ±0** dB or more at any test frequency.
- (e) Table 5 reads as follows:

<b>TABLE 5</b>		
<b>Reference Threshold Levels for Telephonics TDH-39 Earphones</b>		
<b>Frequency, Hz</b>	<b>Reference threshold level for TDH-39 earphones, dB</b>	<b>Sound level meter reading, dB</b>
<b>500</b>	<b>11.5</b>	<b>81.5</b>
<b>1000</b>	<b>7</b>	<b>77</b>
<b>2000</b>	<b>9</b>	<b>79</b>
<b>3000</b>	<b>10</b>	<b>80</b>
<b>4000</b>	<b>9.5</b>	<b>79.5</b>
<b>6000</b>	<b>15.5</b>	<b>85.5</b>

<b>Reference Threshold Levels for Telephonics TDH 39 Earphones</b>		
<b>Frequency, Hz</b>	<b>Reference threshold level for TDH 39 earphones, dB</b>	<b>Sound level meter reading, dB</b>
500	11.5	81.5
1000	7	77
2000	9	79
3000	10	80
4000	9.5	79.5
6000	15.5	85.5

(f) Table 6 reads as follows:

<b>TABLE 6</b>		
<b>Reference Threshold Levels for Telephonics TDH-49 Earphones</b>		
<b>Frequency, Hz</b>	<b>Reference threshold level for TDH-49 earphones, dB</b>	<b>Sound level meter reading, dB</b>
<b>500</b>	<b>13.5</b>	<b>83.5</b>
<b>1000</b>	<b>7.5</b>	<b>77.5</b>
<b>2000</b>	<b>11</b>	<b>81.0</b>
<b>3000</b>	<b>9.5</b>	<b>79.5</b>
<b>4000</b>	<b>10.5</b>	<b>80.5</b>
<b>6000</b>	<b>13.5</b>	<b>83.5</b>
<b>Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check. A deviation of 15 dB or more requires an exhaustive calibration.</b>		

<b>Reference Threshold Levels for Telephonics TDH 49 Earphones</b>		
<b>Frequency, Hz</b>	<b>Reference threshold level for TDH 49 earphones, dB</b>	<b>Sound level meter reading, dB</b>
500	13.5	83.5
1000	7.5	77.5
2000	11	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5

~~Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check. A deviation of 15 dB or more requires an exhaustive calibration.~~

(3) An exhaustive calibration shall be performed at least once every 2 years in accordance with the provisions of **Table 7**, sections 4.1.2, 4.1.3, 4.1.4.3, 4.2, 4.4.1, 4.4.2, 4.4.3, and 4.5 of the American national standards institute's specifications for audiometers, S3.6-1969, which are adopted by reference in R 325.60119. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this calibration.

<b>TABLE 7</b>
<b>ANSI S3.6 “American National Standard Specification For Audiometers” 1969 edition, as adopted in R 325.60101a.</b>
<b>The Following Sections:</b>
<b>4.1.2</b>
<b>4.1.3</b>
<b>4.1.4.3</b>
<b>4.2</b>
<b>4.4.1</b>
<b>4.4.2</b>
<b>4.4.3</b>
<b>4.5</b>

R 325.60122 Hearing protector attenuation.

Rule 22. (1) An employer shall evaluate hearing protector attenuation for the specific noise environments in which the protector will be used in accordance with the procedures specified in **R 325.60122a**. ~~appendix A to these rules. Appendix A is a copy of appendix B to 29 C.F.R. S1910.95, March 8, 1983, which is adopted in these rules by reference. This appendix may be obtained, without cost, from the Michigan Department of Public Health, Division of Occupational Health, P.O. Box 30195, Lansing, Michigan 48909, or from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, at a cost at the time of adoption of these rules of \$29.00.~~

(2) Hearing protectors shall attenuate employee exposure at least to ~~a~~ **an 8-hour** time-weighted average of 90 decibels as required by the provisions of R 325.60103 and R 325.60104.

(3) For employees who have experienced a standard threshold shift, hearing protectors shall attenuate employee exposures ~~at~~ **at or** below the action level.

(4) The adequacy of hearing protector attenuation shall be reevaluated where employee noise exposures increase to the extent that the hearing protectors provided might no longer provide adequate attenuation. The employer shall provide more effective hearing protectors where necessary.

**R 325.60122a Methods for estimating the adequacy of hearing protector attenuation.**

**Rule 22a. (1) For an employee who has experienced a standard threshold shift, hearing protector attenuation must be sufficient to reduce employee exposure to a TWA of 85 dB. An employer shall select 1 of the following methods by which to estimate the adequacy of hearing protector attenuation:**

**(a) The most convenient method is the Noise Reduction Rating (NRR) developed by the Environmental Protection Agency (EPA). According to EPA regulation, the NRR must be shown on the hearing protector package. The NRR is then related to an individual worker's noise environment in order to assess the adequacy of the attenuation of a given hearing protector. This rule describes 4 methods of using the NRR to determine whether a particular hearing protector provides adequate protection within a given exposure environment. Selection among the 4**

procedures is dependent upon the employer's noise measuring instruments.

(b) Instead of using the NRR, an employer may evaluate the adequacy of hearing protector attenuation by using 1 of the 3 methods developed by NIOSH 76-120 'List of Personal Hearing Protectors and Attenuation Data' NTIS Accession number: PB-267461, pages 21-37, as adopted in R 325.60101a. These methods are known as NIOSH Methods No. 1, No. 2, and No. 3. The NRR described below is a simplification of NIOSH Method No. 2. The most complex method is NIOSH Method No. 1, which is the most accurate method since it uses the largest amount of spectral information from the individual employee's noise environment. As in the case of the NRR method described in subrule (2) of this rule, if 1 of the NIOSH methods is used, the selected method must be applied to an individual's noise environment to assess the adequacy of the attenuation. An employer must take a sufficient number of measurements to achieve a representative sample for each time segment.

**NOTE:** Calculated attenuation values reflect realistic values only to the extent that the protectors are properly fitted and worn.

(2) When using the NRR to assess hearing protector adequacy, 1 of the following methods shall be used:

(a) When using a dosimeter that is capable of C-weighted measurements, both of the following apply:

(i) Obtain the employee's C-weighted dose for the entire workshift, and convert to TWA, see R 325.60111.

(ii) Subtract the NRR from the C-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(b) When using a dosimeter that is not capable of C-weighted measurements, the following method may be used:

(i) Convert the A-weighted dose to TWA, see Table 3.

(ii) Subtract 7 dB from the NRR.

(iii) Subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(c) When using a sound level meter set to the A-weighting network, both of the following apply:

(i) Obtain the employee's A-weighted TWA.

(ii) Subtract 7 dB from the NRR, and subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(d) When using a sound level meter set on the C-weighting network, both of the following apply:

(i) Obtain a representative sample of the C-weighted sound levels in the employee's environment.

(ii) Subtract the NRR from the C-weighted average sound level to obtain the estimated A-weighted TWA under the ear protector.

(e) When using area monitoring procedures and a sound level meter set to the A-weighting network, both of the following apply:

(i) Obtain a representative sound level for the area in question.

(ii) Subtract 7 dB from the NRR and subtract the remainder from the A-weighted sound level for that area.

(f) When using area monitoring procedures and a sound level meter set to the C-weighting network, both of the following apply:

(i) Obtain a representative sound level for the area in question.

(ii) Subtract the NRR from the C-weighted sound level for that area.

R 325.60123 Employee training program.

Rule 23. (1) The employer shall **train each employee who is exposed to noise at or above the action level in accordance with the requirements of these rules. The employer shall institute a training program and ensure employee participation in the program.** ~~institute a training program for all employees who are exposed to noise at or above the action level and shall ensure employee participation in such program.~~

(2) The training program shall be repeated annually for each employee included in the hearing conservation program. Information provided in the training program shall be updated to be consistent with changes in protective equipment and work processes.

(3) The employer shall ensure that each employee is informed of all of the following:

- (a) The effects of noise on **hearing, see Appendix A.** ~~hearing. (See appendix B)~~
- (b) The purpose of hearing protectors; the advantages, disadvantages, and attenuation of various types of hearing protectors; and instructions on the selection, fitting, use, and care of hearing protectors.
- (c) The purpose of audiometric testing, and an explanation of the test procedures.

R 325.60124 Access to information and training materials.

Rule 24. (1) The employer shall make copies of these rules available to affected employees or their representatives and shall also post a copy in the workplace.

(2) The employer shall provide to affected employees any informational materials pertaining to these rules that are supplied to the employer by the Michigan **Occupational Safety and Health Administration** ~~occupational safety and health program~~ (MIOSHA).

(3) The employer shall provide, upon request ~~by~~ to a MIOSHA official, all materials related to the employer's training and education program pertaining to these rules.

R 325.60125 Recordkeeping.

Rule 25. (1) An employer shall maintain an accurate record of all employee exposure measurements required by the provisions of R 325.60108 to R 325.60111.

(2) An employer shall retain all employee **audiometric test records** ~~audiograms~~ that are obtained pursuant to the provisions of R 325.60112 to R 325.60114. These records shall include all of the following information:

- (a) Name and job classification of the employee.
- (b) Date of the audiogram.
- (c) Examiner's name.
- (d) Date of last acoustic or exhaustive calibration of the audiometer.
- (e) Employee's most recent noise exposure assessment.

(3) An employer shall maintain accurate records of the measurements of the background sound pressure levels in audiometric test rooms required by the provisions of R 325.60119(5).

R 325.60126 Records; retention; provision; access; transfer.

Rule 26. (1) The employer shall retain records required in R 325.60125 for at least the following periods:

- (a) Noise exposure measurement records shall be retained for 2 years.
- (b) Audiometric test records shall be retained for the duration of the affected employee's employment.

(2) All records required by the provisions of R 325.60125 shall be provided, upon request, to employees, former employees, representatives designated by the individual employee, and MIOSHA officials. The provisions of **Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.60101a, shall** ~~R 325.3451 to R 325.3476, entitled "Employee Medical Records and Trade Secrets,"~~ apply to access to records under this rule.

(3) If the employer ceases to do business, the employer shall transfer to the successor employer all records required to be maintained by this rule, and the successor employer shall retain them for the remainder of the period or periods prescribed in subrule (1) of this rule.

R 325.60127 ~~Appendices.~~ **Rescinded.**

~~Rule 27.(1) Appendix A of these rules is a copy of appendix B of 29 C.F.R. S1910.95, entitled methods for estimating the adequacy of hearing protector attenuation, which is adopted by reference in R 325.60122.~~

~~(2) Appendices B, C, and D are informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.~~

R 325.60128 ~~Availability of documents; permission to reprint.~~ **Rescinded.**

~~Rule 28.(1) A copy of these rules and related appendices are available to employers and employees at no cost from the Michigan Department of Public Health, Division of Occupational Health, Post Office Box 30195, Lansing, Michigan 48909.~~

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**PROPOSED ADMINISTRATIVE RULES**

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

CONSTRUCTION SAFETY STANDARDS

Filed with the Secretary of State on

Proposed Draft June 28, 2016

These rules take effect immediately upon filing with the Secretary of State unless adopted under **section sections** 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 19 and 21 of 1974 PA 154, **MCL 408.1019 and 408.1021**, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030)

R 408.40801, R 408.40810, R 408.40823, R 408.40831, R 408.40832, and R 408.40833 are amended in the Michigan Administrative Code, as follows:

PART 8. HANDLING AND STORAGE OF MATERIALS

R 408.40801 Scope.

Rule 801. This **standard part** pertains to the handling and storage of construction materials, including care and use of slings, ropes, and chains for a construction operation, except for specific rules covering materials covered in **the following MIOSHA standards, which are referenced in R 408.40810:**

- (a) **Construction Safety Standard Part 7 “Welding and Cutting.”**
- (b) **Construction Safety Standard Part 18 “Fire Protection and Prevention.”**
- (c) **Construction Safety Standard Part 20 “Demolition.”**
- (d) **Construction Safety Standard Part 27 “Blasting and Use of Explosives.”**

~~Part 7. Welding and Cutting; Part 18. Fire Protection and Prevention; and Part 27. Blasting and Use of Explosives.~~

R 408.40810 Adoption by reference of standards.

Rule 810. (1) The Compressed Gas Association Standard, P-1--2000, **“Safe Safe Handling of Compressed Gases in Containers,” Containers**, ninth edition, is adopted ~~by reference~~ in these rules. The standard is available from the Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, VA, 20151-2923; telephone number: 703-788-2700 or via the internet at web-site: [www.cganet.com](http://www.cganet.com) at a cost as of the time of adoption of these rules of \$227.00. ~~or it is available for review at the offices of the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Standards Section, 7150 Harris Drive, Box 30643, Lansing, Michigan 48909-8143.~~

(2) **The standard adopted in these rules is available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan**

**Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.** The following Michigan occupational safety and health standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Standards Section, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at web site: [www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost is 4 cents per page.

- (a) Part 1. General Rules, R 408.40101 et seq.
- (b) Part 7. Welding and Cutting, R 408.40701 et seq.
- (c) Part 10. Lifting and Digging Equipment, R 408.41001a et seq.
- (d) Part 13. Mobile Equipment, R 408.41301 et seq.
- (e) Part 18. Fire Protection and Prevention, R 408.41801 et seq.
- (f) Part 27. Blasting And Use of Explosives, R 408.42701 et seq.
- (g) Part 45. Fall Protection, R 408.44501 et seq.
- (h) Part 49. Slings, R 408.14901 et seq.

(3) The standard adopted in these rules may be obtained from the publisher or may be obtained from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143, plus \$20.00 for shipping and handling.

(4) The following Michigan occupational safety and health (MIOSHA) standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at website: [www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(a) Construction Safety Standard Part 7 “Welding and Cutting,” R 408.40701 to R 408.40762.

(b) Construction Safety Standard Part 18 “Fire Protection and Prevention,” R 408.41801 to R 408.41884.

(c) Construction Safety Standard Part 20 “Demolition,” R 408.42001 to R 408.42047.  
Construction Safety Standard Part 27 “Blasting and Use of Explosives,” R 408.42701 to R 408.42799.

(d) General Industry Safety Standard Part 49 “Slings,” R 408.14901 to R 408.14965.

R 408.40823 Compressed gas.

Rule 823. The handling and storage of all compressed gases, except those used for welding and cutting, shall be as prescribed in the Compressed Gas Association Standard, P-1--2000, “**Safe Safe Handling of Compressed Gases in Containers,**” ~~Containers~~, ninth edition, which is adopted by reference in R 408.40810.

R 408.40831 Disposal of waste materials.

Rule 831. (1) The area onto and through which material is to be dropped shall be completely enclosed with barricades not less than 36 inches or more than 42 inches high and not less than 6 feet back from the opening and area receiving the material. Signs warning of the hazard of falling materials shall be posted on the barricades at each level containing the barricades. Removal of signs shall not be permitted in this lower area until debris handling ceases above.

(2) If material is dumped from mechanical equipment or a wheelbarrow, then a toeboard or bumper not less than 4 inches thick x 6 inches high nominal size shall be secured to the floor at each material chute opening.

(3) If the drop is more than 20 feet outside the exterior of the building, then a chute as prescribed in **Construction Safety Standard Part 20 “Demolition,” as referenced in R 408.40810, subrule (2) of this rule** shall be used, and extend to within 8 feet of the lower level.

(4) Material, barricades, and chutes shall not be removed until material handling ceases above.

(5) All scrap lumber, waste materials, or rubbish shall be removed from the immediate work area as the work progresses.

(6) Disposal of waste material or debris by burning shall comply with local fire regulations.

(7) All solvent waste, oily rags, and flammable liquids shall be kept in fire resistant covered containers until removed from the worksite.

#### R 408.40832 Rigging equipment.

Rule 832. (1) Rigging equipment for material handling shall be inspected at the time of installation, before each job, and at the beginning of each shift if in use, by an employee qualified to perform this inspection. Defective rigging equipment shall be removed from service.

(2) If not in use, rigging equipment shall be stored in a manner ~~that which~~ is not hazardous for an employee.

(3) Rigging equipment, other than a sling, hoisting line, and alloy steel chain, shall not be loaded in excess of its recommended safe working load, as prescribed ~~in tables 1 to 22 in General Industry Safety Standard Part 49 “Slings,” as referenced in R 408.40810. Slings, R 408.14901 et seq.~~

#### R 408.40833 Slings.

Rule 833. (1) All slings used to store or handle material for construction operations shall meet the requirements of **General Industry Safety Standard Part 49 “Slings,” as referenced in R 408.40810.** ~~49. Slings, R 408.14901 et seq.~~

(2) Employers shall ensure that rigging equipment complies with all of the following:

(a) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load.

(b) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer.

(c) Not be used without affixed, legible identification markings, required by **subdivision (a) of this subrule.** ~~subrule (2)(a) of this rule.~~

(3) Employers shall not use improved plow-steel wire rope and wire-rope slings with loads in excess of the rated capacities, such as working load limits, indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

(4) Wire rope slings shall have permanently affixed, legible identification markings stating size, rated capacity for the type or types of hitch or hitches used and the angle upon which it is based, and the number of legs if more than 1 leg.

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**PROPOSED ADMINISTRATIVE RULES**

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**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**BUREAU OF CONSTRUCTION CODES**

**BOARD OF MECHANICAL RULES**

**LICENSE EXAMINATION PROCEDURES**

Filed with the Secretary of State on

These rules take immediate Effect after filing with the Secretary of State

Proposed Draft June 2, 2016

(By authority conferred on the board of mechanical rules by section 5 of Act No. 192 of the Public Acts of 1984, MCL 338.975, and Executive Reorganization Order Nos. 2003-1, 2008-4 and 2011-4, MCL 445.2011, 445.2025 and 445.2030)

R 338.909 of the Michigan Administrative Code is amended and R 338.903, R 338.908, and R 338.911 are rescinded as follows:

R 338.903 ~~Examination qualifications~~**Rescinded.**

~~Rule 903. (1) To qualify for examination, the applicant shall furnish on the application, a notarized statement or statements from present or former employers to the effect that the applicant has a minimum of 3 years of experience totaling at least 6000 hours in performance of 1 or more of the work classifications set forth in the act. The notarized statement shall show a detailed and specific description of the type of work performed and the length of time work was performed. (2) When evidence is produced to the effect that an applicant is a graduate of a recognized trade school, credit shall be given the applicant, but such credit shall not exceed 1 year of the required 3 years of experience.~~

~~–(3) If the applicant is unable to comply with any of the requirements in subrules (1) and (2) of this rule, he or she shall, upon written request, appear before a representative of the department and a quorum of the board to present evidence as to his or her eligibility for examination. The board shall then determine if the individual will be allowed to sit for the examination.~~

~~–(4) An applicant shall be of good moral character as defined in the occupational license for former offenders act, 1974 PA 381, MCL 338.41 to 338.47.~~

~~–(5) The department shall have the right to investigate any applicant as to character and experience~~

~~–(6) The department may approve or deny an application for examination based upon the requisites established by the act and these rules.~~

~~–(7) Upon the acceptance, or rejection, of an application the department shall immediately notify the applicant. If an application is rejected, the examination fee shall not be refunded.~~

R 338.908 ~~Review and approval of form and content of examination; scope of examinations; minimum grade for qualification for license for work classification~~**Rescinded.**

~~Rule 908. (1) The examination shall consist of a written test on the law, which shall cover knowledge of the act and the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, and for each work classification for which the applicant qualifies based upon experience provided.~~

~~(2) An examination shall cover the general theories and practices of the specific work classification, knowledge of the code, and applicable laws.~~

~~(3) To qualify for a license for any classification, an applicant shall be required to receive a minimum grade of 70% on the examination for the law portion and for the work classification for which licensure is being sought.~~

R 338.909 Notification of results of examination.

Rule 909. An applicant shall be notified of the results of an examination within 30 business days after completing the examination. A license shall be issued pursuant to R 338.911 within 10 business days after receipt of the license application and fee.

R 338.911 Licenses; issuance **Rescinded.**

~~Rule 911. The department shall issue a license only after an applicant has successfully completed all requirements of the act and these rules, including the receiving of the minimum passing grade on the law portion and work classifications to be covered by the license portion of the examination, and paid the license fee prescribed in the act.~~

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**NOTICE OF PUBLIC HEARING**

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES  
NOTICE OF PUBLIC HEARING

Board of Mechanical Rules License Examination Procedures (ORR# 2016-022 LR)

The Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, will hold a public hearing on Thursday, September 22, 2016 at 9:00 a.m. in Ottawa Building, Upper Level, Conference Room 6, 611 W. Ottawa Street, Lansing, MI 48933. Please come early and bring your driver's license, as you will need to check in with the security desk and be escorted to the conference room. The Board of Mechanical Rules License Examination Procedures is proposed to be effective immediately after filing with the Secretary of State.

The public hearing is being held to receive public comments on the proposed rescissions to the administrative rule noted above.

The proposed rescissions to the Board of Mechanical Rules License Examination Procedures exceed the rule-making delegation authority in section 5 of the Forbes Mechanical Contractors Act, 1984 PA 192. The hearing is being conducted by the Department under the authority of Section 5 of 1984 PA 192, MCL 338.975 and Executive Reorganization order Nos. 2003-1, 2008-4 and 2011-4, MCL 445.2011, 445.2025 and 445.2030.

The proposed rules will be published in the September 1, 2016, *Michigan Register*. Copies of the proposed amendments to the Board of Mechanical Rules License Examination Procedures, may be obtained for a fee of \$3.00 each by submitting a check or money order made payable to the State of Michigan, to the Bureau at the address below. You may download a free copy of the proposed amendments by visiting the Bureau's website at [www.michigan.gov/bcc](http://www.michigan.gov/bcc). The amendments are located under "What's New" on the front page of the website.

Oral or written comments may be presented in person at the hearing on September 22, 2016, or submitted in writing by mail, email, or facsimile no later than 5:00 p.m., September 22, 2016, to the address stated below. If your presentation at the public hearing is in written form, please provide a copy to the Rules Specialist, at the conclusion of your testimony at the hearing.

Department of Licensing and Regulatory Affairs  
Bureau of Construction Codes  
Office of Management & Administrative Services  
P.O. Box 30254  
Lansing, MI 48909  
Telephone (517) 241-6312  
Facsimile (517) 241-9570  
[matsumotos@michigan.gov](mailto:matsumotos@michigan.gov)

The meeting site and parking are accessible. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional services (such as materials in alternative format) in order to participate in the meeting should call Hillary Cushman at (517) 335-2972 (voice) at least 14 days prior to the hearing. LARA is an equal opportunity employer/program.

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**PROPOSED ADMINISTRATIVE RULES**

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

OCCUPATIONAL HEALTH STANDARDS

Filed with the Secretary of State on

Proposed Draft July 20, 2016

These rules take effect immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 14 and 24 of 1974 PA 154, MCL 408.1014 ~~and to~~ 408.1024, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030)

R 325.18301, R 325.18302, and R 325.18303 of the Michigan Administrative Code are amended, as follows:

**PART 591. PROCESS SAFETY MANAGEMENT OF HIGHLY HAZARDOUS CHEMICALS**

R 325.18301 Scope.

Rule 1. (1) **This standard establishes** ~~These rules establish~~ the minimum requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. **These releases may result in toxic, fire, or explosion hazards.**

(2) The regulations adopted by R 325.18302 shall apply to all workplaces pursuant to the provisions of these rules.

(3) The manufacture of explosives, as defined in General Industry Safety Standard Part 55 "Explosives and Blasting Agents," as referenced in R 325.18303, shall ~~also~~ be in compliance with the requirements contained in the provisions of these rules.

(4) The manufacture of pyrotechnics as defined in General Industry Safety Standard Part 55 "Explosives and Blasting Agents," as referenced in R 325.18303, shall ~~also~~ be in compliance with the provisions of these rules.

R 325.18302 Adoption of standards by reference.

Rule 2. (1) The following federal occupational safety and health administration (OSHA) regulations are adopted by reference in these rules:

(a) 29 C.F.R. §1910.119 "Process safety management of highly hazardous chemicals," effective February 8, 2013.

(b) 29 C.F.R. §1910.119 Appendix A "List of highly hazardous chemicals, toxics and reactives (mandatory)," effective December 27, 2011.

(2) All of the following provisions apply with respect to the regulations adopted in ~~subrule (1)~~ of this rule:

(a) A reference to 29 C.F.R. §1910.1200 “Hazard communication,” means Occupational Health Standard Part 430 “Hazard Communication;” General Industry Safety Standard Part 92 “Hazard Communication;” and Construction Safety Standard Part 42 “Hazard Communication;” as referenced in R 325.18303.

(b) A reference to 29 C.F.R. §1910.38, “Emergency action plans,” means General Industry Safety Standard Part 6 “Fire Exits,” as referenced in R 325.18303.

(c) A reference to 29 C.F.R. §1910.109, “Explosives and blasting agents,” means General Industry Safety Standard Part 55 “Explosives and Blasting Agents,” as referenced in R 325.18303.

(d) A reference to 29 C.F.R. §1910.252, “Welding, cutting, and brazing,” means **General Industry Safety Standard Part 12 “Welding and Cutting,”** ~~Occupational Health Standard Part 529 “Welding, Cutting, and Brazing,”~~ as referenced in R 325.18303.

(e) A reference to 29 C.F.R. §1910.120 “Hazardous waste operations and emergency response,” means Occupational Health Standard Part 432 “Hazardous Waste Operations and Emergency Response,” as referenced in R 325.18303.

(3) The provisions of 29 C.F.R. §1910.119 and 29 C.F.R. §1910.119 Appendix A have the same force and effect as rules promulgated under ~~1974 PA 154~~, the Michigan Occupational Safety and Health Act (MIOSHA), **1974 PA 154**, MCL 408.1001 to 408.1094.

(4) The standards adopted in ~~subrule (1)~~ of this rule are available from the United States Department of Labor, Occupational Safety and Health Administration website: [www.osha.gov](http://www.osha.gov), at no charge as of the time of adoption of these rules.

(5) The standards adopted in ~~subrule (1)~~ of this rule are also available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA **Regulatory Services Standards Section, 530 West Allegan Street, 7150 Harris Drive**, Lansing, Michigan, 48909-8143.

(6) The standards adopted in ~~subrule (1)~~ of this rule may be obtained from the publisher or may also be obtained from the Department of Licensing and Regulatory Affairs, MIOSHA **Regulatory Services Standards Section, 530 West Allegan Street, 7150 Harris Drive**, Lansing, Michigan, 48909-8143, plus \$20.00 for shipping and handling.

R 325.18303 MIOSHA referenced standards.

Rule 3. The following Michigan occupational safety and health (MIOSHA) standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA **Regulatory Services Standards Section, 530 West Allegan Street, 7150 Harris Drive**, P.O. Box 30643, Lansing, Michigan, 48909-8143 or via the internet at website: [www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost, as of the time of adoption of these rules, is 4 cents per page.

(a) Construction Safety Standard Part 42 “Hazard Communication,” R 408.44201 to R 408.44203.

(b) General Industry Safety Standard Part 92 “Hazard Communication,” R 408.19201 to R 408.19203.

(c) Occupational Health Standard Part 430 “Hazard Communication,” R 325.77001 to R 325.77003.

(d) General Industry Safety Standard Part 6 “Fire Exits,” R 408.10601 to R 408.10697.

(e) **General Industry Safety Standard Part 12 “Welding and Cutting,” R 408.11201 to R 408.11299.** ~~General Industry Safety Standard Part 55 “Explosives and Blasting Agents,” R 408.15501.~~

(f) **General Industry Safety Standard Part 55 “Explosives and Blasting Agents,” R 408.15501.** ~~Occupational Health Standard Part 432 “Hazardous Waste Operations and Emergency Response,” R 325.52101 to R 325.52137.~~

(g) **Occupational Health Standard Part 432 “Hazardous Waste Operations and Emergency Response,” R 325.52101 to R 325.52137.** ~~Occupational Health Standard Part 529 “Welding, Cutting, and Brazing,” R 325.52901 to R 325.52908.~~

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**OPINIONS OF THE  
ATTORNEY GENERAL**

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*MCL 14.32 states in part:*

*“It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer”*

*MCL 24.208 states in part:*

*“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\* \* \*

*(j) Attorney general opinions.”*

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**OPINIONS OF THE ATTORNEY GENERAL**

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STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

UNIFORM TRAFFIC CODE: Soliciting on public streets and highways.

MICHIGAN VEHICLE CODE:

CONST 1963, ART 7, § 29

VILLAGES:

Section 676b, MCL 257.676b, of the Michigan Vehicle Code, MCL 257.1 *et seq.*, prohibits a person from soliciting contributions, including contributions on behalf of civic or charitable organizations, from the occupants of vehicles if the person soliciting blocks, obstructs, impedes, or otherwise interferes with the normal flow of vehicular traffic upon a public street or highway in this State. No other statute or rule authorizes or permits the authorization of a person to engage in this activity.

Rule 713, Mich Admin Code, R 28.1713, of the Uniform Traffic Code, prohibits a person in the improved portion of a roadway from soliciting contributions in support of a civic or charitable organization from the occupant of any vehicle. Mich Admin Code, R 28.1713.

Opinion No. 7291

July 29, 2016

The Honorable Phil Pavlov  
State Senator  
The Capitol  
Lansing, MI 48909

You have asked whether charitable and civic organizations may solicit contributions in public roadways.

Although your request did not identify a particular organization, this office is aware that members of various charitable and civic organizations sometimes solicit contributions from persons occupying vehicles while in a public roadway. Your request and information included with it note that the Village Council for the Village of Sebewaing (Village), Huron County, decided it would no longer

permit organizations to do so. The Village cited a number of laws to support its decision, including Rule 28.1713 of the Uniform Traffic Code. Mich Admin Code, R 28.1713.<sup>1</sup>

The Michigan Constitution provides, in pertinent part, that “[e]xcept as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to” those local units of government. Const 1963, art 7, § 29. The Constitution further provides that each city and village “shall have the power” to “adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.” Const 1963, art 7, § 22.

In turn, the Legislature in both the General Law Village Act, 1895 PA 3, MCL 61.1 *et seq.* (applicable to Sebewaing as a general law village) and the Home Rule Village Act, 1909 PA 278, MCL 78.1 *et seq.* (applicable to home rule villages), authorizes villages to “adopt” the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 *et seq.* See MCL 66.4(2) and MCL 78.23(i), both of which provide that “a village may adopt . . . the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923[.]”<sup>2</sup> Similarly, MCL 257.951 provides that “[a] city, township, or village may adopt by reference a code or ordinance for the regulation of traffic within cities, townships, and villages that has been promulgated by the director of the department of state police.” Here, the Village has done both – adopting by

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<sup>1</sup> The Uniform Traffic Code Act, 1956 PA 62, MCL 257.951 *et seq.*, authorizes the Director of the Department of State Police to promulgate, through administrative rules, a uniform traffic code.

<sup>2</sup> Cities and townships may also adopt the Michigan Vehicle Code as an ordinance under MCL 117.3(k), and MCL 41.181(3), respectively.

reference the Michigan Vehicle Code, see Ordinance § 70.15, and the Uniform Traffic Code, see Ordinance § 70.01.<sup>1</sup>

The Michigan Vehicle Code sets forth requirements for the licensure and regulation of drivers and vehicles using publicly maintained streets and highways and, to a lesser extent, the use of those streets and highways by pedestrians. “The purpose of the Vehicle Code is to protect citizens and vehicles while on the public highways.” *People v O’Neal*, 198 Mich App 118, 122 (1993) (internal citation omitted). As pertinent here, Chapter 6, Obedience to and Effect of Traffic Laws, MCL 257.601 through 257.750, provides that the chapter applies “uniformly throughout this state and in all political subdivisions and municipalities in the state.” MCL 257.605(1).

Section 676b of the chapter provides in subsection (1) that:

*A person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section shall not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway. [MCL 257.676b(1) (emphasis added).]*

A violation of this statute constitutes a civil infraction. MCL 257.676b(2). This section is broadly worded and prohibits a person from using his or her body in a way that interferes with the normal flow of traffic on a public street unless authorized to engage in the activity. A person soliciting contributions on behalf of a charitable organization from the occupants of vehicles on public streets or highways may fall within this prohibition. So too may any other person soliciting contributions, including panhandlers or persons attempting to engage in commercial activities, such as selling goods or offering services to vehicle occupants.

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<sup>1</sup> The Village’s ordinances are available online at [http://library.amlegal.com/nxt/gateway.dll/Michigan/sebewaing\\_mi/villageofsebewaingmichigancodeofordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sebewaing\\_mi](http://library.amlegal.com/nxt/gateway.dll/Michigan/sebewaing_mi/villageofsebewaingmichigancodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:sebewaing_mi), (accessed July 6, 2016).

The interpretation of statutory language begins with the plain language of the statute. *Driver v Naini*, 490 Mich 239, 246-247 (2011). “We must give effect to the Legislature’s intent, and the best indicator of the Legislature’s intent is the words used.” *Johnson v Pastoriza*, 491 Mich 417, 436 (2012). Additionally, when determining this intent, effect must be given “to every word, phrase, and clause in a statute” to “avoid an interpretation that renders nugatory or surplusage any part of a statute.” *Hannay v Dep’t of Transp*, 497 Mich 45, 57 (2014) (quotation marks and citation omitted).

As used in subsection 676b(1), the term “person” means “every natural person, firm, copartnership, association, or corporation and their legal successors.” MCL 257.40. And the terms “highway or street” mean “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.” MCL 257.20. Because the Michigan Vehicle Code does not define the terms “block, obstruct, impede,” or “interfere,” these terms may be given their ordinary meaning. *Oakland Co Bd of Co Rd Comm’rs v Michigan Prop & Cas Guar Ass’n*, 456 Mich 590, 604 (1998). In that case, “[r]eference to dictionary definitions is appropriate.” *Jordan v Jarvis*, 200 Mich App 445, 451 (1993).

These terms share similar meanings. For example, the terms “obstruct” and “impede” are incorporated into the definition of “block” as “anything that stops movement or progress; obstruction, obstacle, or hindrance; . . . to impede the passage or progress of; obstruct.” Webster’s New World Dictionary (3rd ed, 1988). And the word “interfere” means “[t]he act or an instance of hindering, obstructing, or impeding.” The American Heritage College Dictionary (3rd ed, 1997).

Again, your request does not include specific facts. But it is reasonable to conclude based on the plain language of the statute that the presence of a person *in* a street requesting contributions from vehicle occupants would ordinarily block, obstruct, impede, or otherwise interfere with the normal flow of traffic on that street. Similarly, a person standing near a street or highway, for instance on a curb,

requesting contributions from an occupant of a vehicle in the street or highway could very well block, obstruct, impede, or otherwise interfere with the normal flow of traffic upon that street or highway by means of his or her person. MCL 257.676b(1). *Id.* Whether this is true will depend upon the particular facts and circumstances. With respect to cities, villages, and townships, it is the “duty” of local law enforcement to “enforce the street traffic regulations . . . and all state vehicle laws that are applicable to street traffic” in the city, village, or township. See Mich Admin Code, R 28.1101.

Thus, with respect to the Village of Sebewaing, local law enforcement officers would determine in the first instance whether the activity violates the statute. If the activity violates the statute under the particular facts, the activity would be prohibited if the person was otherwise “without authority” to do so. Because this activity is generally prohibited by statute, the “authority” to engage in the prohibited conduct must also be found in the law. See, e.g., *Attorney General ex rel Brotherton v Common Council of City of Detroit*, 148 Mich 71, 79 (1907) (“If a prohibitory constitutional provision, general in its character, is subject to exceptions, those exceptions must be found in the Constitution.”).

There are certain statutes and rules that authorize persons to engage in activity in a street or highway. For example, under the Uniform Traffic Code, police officers and firefighters are authorized to direct traffic. See Mich Admin Code, R 28.1102 and 1103; see also MCL 257.602. The Michigan Vehicle Code provides that workers “performing construction, maintenance, surveying, or utility work within a work zone may direct traffic within that work zone” if authorized by state or local officials. MCL 257.611a(1). Similarly, school crossing guards may stop traffic while on duty at their assigned crossings. MCL 257.613b. Subsection 676b(1) itself exempts persons working on public utility facilities. MCL 257.676b(1). And pedestrians may walk in a highway if no sidewalks are available, MCL 257.655, or may cross roadways in a designated place and manner, Mich Admin Code,

R 28.1702 and 28.1705. But this office found no statute or rule expressly authorizing a person to request contributions from the occupants of vehicles while in, near, or moving upon a street or highway.

The closest statute is MCL 257.676a(1)–(2), which provides, in relevant part, that “a person” may request a “permit” from the Michigan Department of Transportation (MDOT) to “sell[ ] or offer[ ] for sale, or display[ ] . . . for sale, goods, wares, produce, fruit, vegetables, or merchandise . . . *within the right-of-way of a state trunk line highway.*” (Emphasis added). MDOT “may issue” the permit “if the permitted activities *do not create an unsafe situation and do not interfere with transportation* along the state trunk line highway.” MCL 257.676a(2) (emphasis added). In addition, “[a]s a condition of issuing a permit . . . [MDOT] shall require the municipality having jurisdiction over the site to pass a resolution authorizing the activities . . . and may require that the municipality . . . agree to enforce compliance with the permit.” *Id.*

This statute provides a limited opportunity for a person to ask MDOT for a permit to sell various goods or merchandise “within the right-of-way”<sup>1</sup> of a “state trunk line highway”<sup>1</sup> so long as the activity “does not create an unsafe situation” or “interfere” with travel, and the activity is also approved by the local municipality. In that case, this statute acts as an exception to subsection 676b(1) by providing the person with “authority” to engage in activity that may otherwise violate subsection 676b(1).

Accordingly, the question arises whether soliciting contributions for charitable and civic organizations falls within the activities for which a person may request a permit under subsection

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<sup>1</sup> Highways are generally 66 feet in width, MCL 221.20, including improved and unimproved portions, all of which would be in the right-of-way. See MCL 257.20 (“highway” means “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.”); *Laug v Ottawa Co Road Comm’n*, 37 Mich App 757, 763-764 (1972) (describing “66 foot right-of-way”).

676a(1). Again, your request did not include facts regarding the nature of the solicitation at issue. But under a plain reading of the statute, the solicitation and receipt of a monetary contribution for a charity would not qualify as an offer for, or the “sale” of, “goods, wares, produce, fruit, vegetables, or merchandise.” MCL 257.676a(1). The term “sale” is not defined in the Motor Vehicle Code but may be understood to mean “[t]he transfer of property or title for a price.” Black’s Law Dictionary (7th ed); see also MCL 440.2106(1) (a “sale,” as defined by the Uniform Commercial Code, is “the passing of title from the seller to the buyer for a price”). The receipt of a monetary contribution with no exchange of goods or merchandise would not constitute a “sale” for purposes of subsection 676a(1).<sup>2</sup> This statute, therefore, does not authorize a person to request monetary contributions from the occupants of vehicles while in, near, or moving upon a street or highway in avoidance of subsection 676b(1).

Finally, while the Motor Vehicle Code authorizes “local authorities”<sup>3</sup> to regulate in certain areas with respect to streets or highways under the jurisdiction of the locality, MCL 257.606, none of the permitted areas of regulation include authorizing a person to request contributions from the occupants of vehicles while standing near, in, or moving upon a street or highway so as to avoid the application of subsection 676b(1). MCL 257.676b(1).<sup>4</sup>

It is my opinion, therefore, that section 676b, MCL 257.676b of the Michigan Vehicle Code, prohibits a person from soliciting contributions, including on behalf of civic or charitable organizations,

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<sup>1</sup> State trunk line highways are “roads, streets, and highways, either located within or outside the limits of incorporated cities and villages, now or hereafter constituted state trunk line highways under the laws of this state.” MCL 247.651. State trunk line highways are generally under the control of the State.

<sup>2</sup> Even if some other manner of soliciting contributions for charitable or civic contributions might fall within the statute, it would be subject to the limitations contained therein, i.e. only within the right-of-way of a state trunk line highway and as permitted by MDOT and the local municipality.

<sup>3</sup> The term “local authorities” means “every municipal and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.” MCL 257.27.

<sup>4</sup> Notably, the Michigan Vehicle Code does not prevent local authorities from “[r]egulating or prohibiting processions or assemblages on the highways or streets.” MCL 257.606(1)(d). The Uniform Traffic Code, in turn, authorizes chiefs of police to issue permits for parades and processions. Mich Admin Code, R 28.1447.

from the occupants of vehicles if the person soliciting blocks, obstructs, impedes, or otherwise interferes with the normal flow of vehicular traffic upon a public street or highway in this State. No other statute or rule authorizes or permits the authorization of a person to engage in this activity.

In addition to section 676b of the Michigan Vehicle Code, this activity may also be prohibited by the Uniform Traffic Code. As noted above, the Village adopted the Uniform Traffic Code, which was promulgated by the Director of the Department of State Police as administrative rules. MCL 257.951(1) (“The director of the department of state police may promulgate a uniform traffic code in compliance with the administrative procedures act[.]”). The rules are set forth at Mich Admin Code, R 28.1001 through R 28.2075.<sup>1</sup>

Rule 28.1713(1) of the Uniform Traffic Code provides that “[a] *person* shall not *stand in a roadway* for the purpose of *soliciting* a ride, employment, or *business* from the occupant of any vehicle.” (Emphasis added). A violation of this rule constitutes a civil infraction. Mich Admin Code, R 28.1713(2). As a duly promulgated rule, Rule 713 has legal force and effect. See *Michigan Farm Bureau v Dep’t of Environmental Quality*, 292 Mich App 106, 129 (2011).

The rules of construction applicable to statutes also apply to administrative rules. *Detroit Base Coalition for the Human Rights v Dep’t of Social Services*, 431 Mich 172, 185 (1988); MCL 24.232(1). Accordingly, when interpreting an administrative rule, the plain meaning of the critical word or phrase must be considered. *People v Plunkett*, 485 Mich 50, 58 (2010).

The Uniform Traffic Code incorporates definitions from the Michigan Vehicle Code. Mich Admin Code, R 28.1001(2). Thus, for purposes of Rule 713 the word “person” means “*every natural person, firm, copartnership, association, or corporation and their legal successors.*” MCL 257.40

(emphasis added). The term “roadway” means “that portion of a highway improved, designed, or ordinarily used for vehicular travel.” MCL 257.55. But neither the Uniform Traffic Code nor the Michigan Vehicle Code defines the terms “soliciting” or “business.” As above, reference to dictionary definitions is thus appropriate. *Jordan*, 200 Mich App at 451.

The term “soliciting” as used here means “to ask or seek earnestly or pleadingly; appeal to or for [to solicit aid, to solicit members for donations][.]” Webster’s New World Dictionary (3rd ed, 1988). The word “business” has many definitions, but may reasonably be understood here to mean “one’s work, occupation, or profession.” *Id.* And while civic and charitable organizations may not be viewed as businesses in the ordinary sense, these organizations nevertheless conduct “business.”

In *Auto-Owners Insurance Co v Seils*, 310 Mich App 132, 137-138 (2015), the Court of Appeals interpreted the term “business” as used in an insurance contract and applied to the Fraternal Order of Police Associates (FOPA), Grosse Pointe Lodge 102, a nonprofit corporation organized for the purpose of supporting the police and various charities. The Court quoted several definitions of the term “business,” *id.* at 148, ultimately concluding that the FOPA’s “business” was its charitable activities:

[I]n this context, the word “business” can fairly be read as “occupation, profession, or trade,” *Random House Webster’s College Dictionary* (1992), or “specific occupation or pursuit,” *The American Heritage Dictionary, Second College Edition* (1985). Fundraising was necessary for the FOPA’s “business” or “pursuit” of charitable and civic activities, and the concession agreement clearly related to or pertained to the FOPA’s “business” or “pursuit” of charitable and civic activities. [*Id.* at 153.]

This conclusion is consistent with Michigan’s Nonprofit Corporation Act, MCL 450.2101 *et seq.*, under which many charitable and civic organizations are incorporated. That Act contains numerous and varied references to the word “business,” and makes clear that nonprofit corporations – although not formed to make a profit – conduct “business” as they go about their daily activities to

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<sup>1</sup> The administrative rules are available at [http://w3.lara.state.mi.us/orr/Files/AdminCode/17\\_10016\\_AdminCode.pdf](http://w3.lara.state.mi.us/orr/Files/AdminCode/17_10016_AdminCode.pdf),

achieve their organizations’ purpose. See, for example, MCL 450.2501(1) (“The *business* and affairs of a corporation shall be managed by or under the direction of its board . . .”) (emphasis added); MCL 450.2911(1)(e) (Each nonprofit corporation’s annual report shall include “[t]he general nature and kind of *business* in which the corporation is engaged.”) (emphasis added); MCL 450.2209(1)(a) (The nonprofit corporation’s articles of incorporation shall include a “provision for management of the *business* and conduct of the affairs of the corporation . . .”) (emphasis added); MCL 450.2241(a) (Each nonprofit conducting business in Michigan shall maintain “[a] registered office that may be the same as its place of *business*.”) (emphasis added).

Accordingly, applying these definitions of “soliciting” and “business,” it is reasonable to conclude that a person asking for contributions in support of a civic or charitable organization, is “soliciting . . . business” for purposes of Rule 713. The Rule thus prohibits a member of a charitable or civic organization, as a natural person, from being in a highway for the purpose of asking for contributions on behalf of the organization from the occupants of vehicles. This would also be true for any other person engaged in activities prohibited under the Rule, including persons offering goods or services for sale to vehicle occupants or panhandling. Rule 713 contains no exceptions, but is qualified in that the person must be within the portion of the roadway “improved, designed, or ordinarily used for vehicular travel” in order to violate the rule. A person soliciting contributions somewhere other than within the improved portion of the roadway would not violate Rule 713.

Nonetheless, while doing so may avoid violation of Rule 713 of the Uniform Traffic Code, such activity may still violate section 676b of the Michigan Vehicle Code if the person’s soliciting blocks, obstructs, impedes, or otherwise interferes with the normal flow of vehicular traffic upon the street or

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(accessed July 6, 2016).

highway.<sup>1</sup> And as discussed above, whether the activity violates section 676b will depend upon the particular facts and circumstances as determined by local law enforcement.

This office recognizes the important services charitable and civic organizations provide to Michigan citizens, and is cognizant of the constitutional protections accorded their solicitation activities in traditional public forums. See *Village of Schaumburg v Citizens for a Better Environment*, 444 US 620 (1980) (holding that charitable organizations’ solicitations for contributions are protected speech); *Frisby v Schultz*, 487 US 474, 481 (1988) (“all public streets are held in the public trust and are properly considered traditional public fora”). Even so, the government may impose reasonable time, place, and manner restrictions on such activities. *Ward v Rock Against Racism*, 491 US 781, 791 (1989). State and local governments have a significant governmental interest in preserving the orderly flow of traffic and pedestrian safety, and similar laws have been upheld as constitutional. See *Contributor v City of Brentwood*, 726 F3d 861 (CA 6, 2013) (ordinance prohibiting newspapers sales in street to vehicle occupants constitutional); *Ater v Armstrong*, 961 F2d 1224 (CA 6, 1992) (statute prohibiting persons from standing in roadways but with limited exception for soliciting with appropriate safety measures constitutional); *Traditionalist American Knights of the Ku Klux Klan v City of Desloge*, 775 F3d 969 (CA 8, 2015) (ordinance prohibiting pedestrians from soliciting or distributing in roadways was

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<sup>1</sup> There are a number of other statutes and rules governing pedestrians, i.e., “any person afoot,” MCL 257.39, that might be implicated by the activities discussed in this Opinion. See, for example, MCL 257.655(1) (“Where sidewalks are provided, a pedestrian shall not walk upon the main traveled portion of the highway.”); Mich. Admin Code, R 28.1701 (pedestrians are subject to traffic control signals); R 28.1705 (crossing roadway at right angle or shortest route); R 28.1706 (pedestrians crossing roadway at point other than within marked crosswalk must yield right-of-way to vehicles in roadway); R 28.1709 (prohibiting crossing roadway except in marked crosswalk where traffic-control signals are in operation); and R 28.1710 (prohibiting crossing a roadway other than in a crosswalk in a business district). Moreover, the soliciting activities at issue may also place vehicle drivers at risk of violating provisions of the Michigan Vehicle Code or Uniform Traffic Code.

constitutional).<sup>1</sup> But see, e.g., *Wilkinson v Utah*, 860 F Supp 2d 1284 (D Utah, 2012) (holding that statute prohibiting persons from soliciting contributions from vehicle occupants while in a roadway was unconstitutional).

It is my opinion, therefore, that Rule 713, of the Uniform Traffic Code, prohibits a person in the improved portion of a roadway from soliciting contributions in support of a civic or charitable organization from the occupant of any vehicle. Mich Admin Code, R 28.1713.

BILL SCHUETTE  
Attorney General

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<sup>1</sup> The decision in *Speet v Schuette*, 726 F3d 867 (CA 6, 2013), is distinguishable because the state statute at issue in that case placed a blanket prohibition on panhandling at all times and in all places.

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**(2016 SESSION)**

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*MCL 24.208 states in part:*

*“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\*       \*       \*

*(i) Other official information considered necessary or appropriate by the Office of Regulatory Reform.”*

*The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).*

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**MICHIGAN ADMINISTRATIVE CODE TABLE  
(2015 RULE FILINGS)**

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R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue
29.1901	*	10	325.5005	*	10	325.5081	*	10
29.1902	*	10	325.5006	*	10	325.5087	*	10
29.1903	*	10	325.5007	*	10	325.5110	*	10
29.1904	*	10	325.5008	*	10	325.5111	R	10
29.1905	*	10	325.5009	*	10	325.5111a	R	10
29.1906	*	10	325.5010	*	10	325.5111b	R	10
29.1907	*	10	325.5011	*	10	325.5111c	R	10
29.1908	*	10	325.5012	*	10	325.5112	R	10
29.1921	*	10	325.5013	*	10	325.5113	R	10
29.1922	*	10	325.5014	*	10	325.5114	R	10
29.1923	*	10	325.5016	*	10	325.5115	R	10
29.1924	*	10	325.5017	*	10	325.5116	R	10
29.1931	*	10	325.5018	*	10	325.5117	R	10
29.1932	*	10	325.5019	*	10	325.5117	R	10
29.1933	*	10	325.5020	*	10	325.5121	R	10
29.1934	*	10	325.5031	*	10	325.5122	R	10
29.1907a	A	10	325.5033	*	10	325.5132	R	10
29.1909	R	10	325.5041	*	10	325.5148	R	10
125.651	R	4	325.5043	*	10	325.5149	R	10
125.652	R	4	325.5044	*	10	325.5181	R	10
125.653	R	4	325.5046	*	10	325.5182	R	10
125.654	R	4	325.5047	*	10	325.5183	R	10
206.28	A	8	325.5051	*	10	325.5184	R	10
281.700.3	*	4	325.5052	*	10	325.5185	R	10
325.1	*	2	325.5053	*	10	325.5186	R	10
325.2	*	2	325.5054	*	10	325.5187	R	10
325.3	*	2	325.5055	*	10	325.5188	R	10
325.4	*	2	325.5056	*	10	325.5189	R	10
325.2581	R	3	325.5057	*	10	325.5191	R	10
325.2583	R	3	325.5058	*	10	325.5192	R	10
325.2584	R	3	325.5059	*	10	325.5193	R	10
325.2586	R	3	325.5060	*	10	325.5194	R	10
325.2587	R	3	325.5061	*	10	325.5195	R	10
325.2588	R	3	325.5065	*	10	325.5196	R	10
325.2589	R	3	325.5066	*	10	325.5232	R	10
325.2590	R	3	325.5067	*	10	325.5256	R	10
325.2591	R	3	325.5071	*	10	325.5273	R	10
325.5002	*	10	325.5072	*	10	325.5274	R	10
325.5003	*	10	325.5073	*	10	325.5281	R	10
325.5004	*	10	325.5074	*	10	325.5282	R	10

(\* Amendment to Rule, A Added Rule, N New Rule, R Rescinded Rule)

2016 MR 15 – September 1, 2016

R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue
325.5285	R	10	325.5361	R	10	325.5438	R	10
325.5286	R	10	325.5362	R	10	325.5439	R	10
325.5287	R	10	325.5365	R	10	325.5440	R	10
325.5288	R	10	325.5366	R	10	325.5441	R	10
325.5289	R	10	325.5368	R	10	325.5442	R	10
325.5290	R	10	325.5371	R	10	325.5448	R	10
325.5291	R	10	325.5372	R	10	325.5449	R	10
325.5293	R	10	325.5373	R	10	325.5461	R	10
325.5294	R	10	325.5375	R	10	325.5462	R	10
325.5296	R	10	325.5376	R	10	325.5464	R	10
325.5297	R	10	325.5378	R	10	325.5465	R	10
325.5298	R	10	325.5379	R	10	325.5466	R	10
325.5299	R	10	325.5380	R	10	325.5468	R	10
325.5301	R	10	325.5381	R	10	325.5471	R	10
325.5302	R	10	325.5383	R	10	325.5474	R	10
325.5303	R	10	325.5384	R	10	325.5475	R	10
325.5305	R	10	325.5385	R	10	325.5482	R	10
325.5306	R	10	325.5386	R	10	325.5484	R	10
325.5307	R	10	325.5388	R	10	325.5485	R	10
325.5309	R	10	325.5389	R	10	325.5486	R	10
325.5311	R	10	325.5390	R	10	325.5487	R	10
325.5312	R	10	325.5391	R	10	325.5491	R	10
325.5315	R	10	325.5395	R	10	325.5492	R	10
325.5317	R	10	325.5396	R	10	325.5493	R	10
325.5321	R	10	325.5397	R	10	325.5494	R	10
325.5322	R	10	325.5401	R	10	325.5495	R	10
325.5323	R	10	325.5402	R	10	325.5501	R	10
325.5325	R	10	325.5403	R	10	325.5505	R	10
325.5331	R	10	325.5404	R	10	325.5506	R	10
325.5333	R	10	325.5405	R	10	325.5507	R	10
325.5337	R	10	325.5407	R	10	325.5508	R	10
325.5347	R	10	325.5409	R	10	325.5601	R	10
325.5348	R	10	325.5411	R	10	325.5601a	R	10
325.5351	R	10	325.5417	R	10	325.5602	R	10
325.5352	R	10	325.5418	R	10	325.5603	R	10
325.5353	R	10	325.5421	R	10	325.5605	R	10
325.5355	R	10	325.5422	R	10	325.5606	R	10
325.5357	R	10	325.5423	R	10	325.5607	R	10
325.5358	R	10	325.5425	R	10	325.5608	R	10
325.5359	R	10	325.5437	R	10	325.5609	R	10

(\* Amendment to Rule, A Added Rule, N New Rule, R Rescinded Rule)

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R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue
325.5610	R	10	325.5696	R	10	325.5214	*	10
325.5611	R	10	325.5697	R	10	325.5215	*	10
325.5612	R	10	325.5698	R	10	325.5216	*	10
325.5613	R	10	325.5701	R	10	325.5217	*	10
325.5626	R	10	325.5703	R	10	325.5218	*	10
325.5627	R	10	325.5705	R	10	325.5219	*	10
325.5628	R	10	325.5707	R	10	325.5220	*	10
325.5629	R	10	325.5709	R	10	325.5221	*	10
325.5630	R	10	325.5711	R	10	325.5222	*	10
325.5634	R	10	325.5713	R	10	325.5224	*	10
325.5635	R	10	325.5715	R	10	325.5225	*	10
325.5637	R	10	325.5717	R	10	325.5226	*	10
325.5655	R	10	325.5719	R	10	325.5227	*	10
325.5656	R	10	325.5721	R	10	325.5228	*	10
325.5657	R	10	325.5102	*	10	325.5229	*	10
325.5658	R	10	325.5117a	*	10	325.5230	*	10
325.5667	R	10	325.5118	*	10	325.5231	*	10
325.5668	R	10	325.5119	*	10	325.5233	*	10
325.5669	R	10	325.5120	*	10	325.5236	*	10
325.5674	R	10	325.5123	*	10	325.5237	*	10
325.5675	R	10	325.5124	*	10	325.5238	*	10
325.5676	R	10	325.5125	*	10	325.5239	*	10
325.5677	R	10	325.5131	*	10	325.5240	*	10
325.5678	R	10	325.5133	*	10	325.5241	*	10
325.5679	R	10	325.5141	*	10	325.5245	*	10
325.5681	R	10	325.5143	*	10	325.5246	*	10
325.5682	R	10	325.5144	*	10	325.5247	*	10
325.5683	R	10	325.5145	*	10	325.5250	*	10
325.5684	R	10	325.5146	*	10	325.5253	*	10
325.5685	R	10	325.5147	*	10	325.5255	*	10
325.5686	R	10	325.5201	*	10	325.5261	*	10
325.5687	R	10	325.5202	*	10	325.5262	*	10
325.5688	R	10	325.5203	*	10	325.5263	*	10
325.5689	R	10	325.5205	*	10	325.5264	*	10
325.5690	R	10	325.5206	*	10	325.5265	*	10
325.5691	R	10	325.5208	*	10	325.5266	*	10
325.5692	R	10	325.5210	*	10	325.5267	*	10
325.5693	R	10	325.5211	*	10	325.5268	*	10
325.5694	R	10	325.5212	*	10	325.5269	*	10
325.5695	R	10	325.5213	*	10	325.5270	*	10

(\* Amendment to Rule, A Added Rule, N New Rule, R Rescinded Rule)

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R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue
325.5271	*	10	325.52601	*	5	338.4973	*	6
325.5431	*	10	325.52602	*	5	338.4976	*	6
325.5432	*	10	338.1a	A	8	338.4978	*	6
325.5435	*	10	338.601	*	6	338.4982	*	6
325.5446	*	10	338.607	*	6	338.6103	A	8
325.5447	*	10	338.611	*	6	338.12001a	A	6
325.5450	*	10	338.613	*	6	338.13002	A	8
325.5452	*	10	338.617	*	6	339.14002	A	6
325.5454	*	10	338.619	*	6	400.5001	R	3
325.5455	*	10	338.621	*	6	400.5002	R	3
325.5481	*	10	338.623	*	6	400.5004	R	3
325.5511	*	10	338.602	A	6	400.5005	R	3
325.5021	R	10	338.604	A	6	400.5006	R	3
325.5049	R	10	338.627	A	6	400.5008	R	3
325.5060	R	10	338.629	A	6	400.5009	R	3
325.5061	R	10	338.641	A	6	400.5011	R	3
325.5065	R	10	338.645	a	6	400.5013	R	3
325.5066	R	10	338.647	A	6	400.5014	R	3
325.5067	R	10	338.649	A	6	400.5016	R	3
325.5071	R	10	338.609	R	6	400.5017	R	3
325.5072	R	10	338.625	R	6	400.5018	R	3
325.5073	R	10	338.1303	A	8	408.10702	A	5
325.5074	R	10	338.1751a	A	6	408.10711	*	5
325.5081	R	10	338.2201a	A	6	408.10712	*	5
325.5087	R	10	338.3113	*	8	408.10713	*	5
325.5110	R	10	338.3120	*	8	408.10727	*	5
325.52001	*	6	338.3121	*	8	408.10753	*	5
325.52002	*	6	338.3123	*	8	408.18502	*	5
325.52003	*	6	338.3125	*	8	408.18599	*	5
325.52005	*	6	338.3651	A	6	408.14016e	R	6
325.52008	*	6	338.3653	A	6	408.14017a	R	6
325.52011	*	6	338.3655	A	6	408.14018a	R	6
325.50251	*	5	338.3657	A	6	408.14019a	R	6
325.50252	*	5	338.3659	A	6	408.14019b	R	6
325.50253	*	5	338.3661	A	6	408.14019c	R	6
325.50254	*	5	338.3663	A	6	408.14020a	R	6
325.50255	*	5	338.3665	A	6	408.14021a	R	6
325.50256	*	5	338.3901a	A	6	408.14021b	R	6
325.50257	*	5	338.4971	*	6	408.14022a	R	6
325.50258	*	5	338.4972	*	6	408.14023a	R	6

(\* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

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R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue
408.14024a	R	6	408.41006c	A	6	408.41053g	A	6
408.14025a	R	6	408.41006d	A	6	408.41054	A	6
408.14025b	R	6	408.41006e	A	6	408.41055	A	6
408.14026a	R	6	408.41007	A	6	408.41055a	A	6
408.14027a	R	6	408.41035	A	6	408.41055b	A	6
408.14028a	R	6	408.41035a	A	6	408.41055c	A	6
408.14029a	R	6	408.41035b	A	6	408.41056	A	6
408.14030a	R	6	408.41035c	A	6	408.41056a	A	6
408.14031a	R	6	408.41035d	A	6	408.41056b	A	6
408.14032a	R	6	408.41036	A	6	408.41056c	A	6
408.14033a	R	6	408.41036a	A	6	408.41056d	A	6
408.14034a	R	6	408.41036b	A	6	408.41056e	A	6
408.14041a	R	6	408.41036c	A	6	408.41056f	A	6
408.17405	*	8	408.41036d	A	6	408.41056g	A	6
408.17411	*	8	408.41037	A	6	408.41056h	A	6
408.17421	*	8	408.41037a	A	6	408.41056i	A	6
408.17422	*	8	408.41037b	A	6	408.41057	A	6
408.17423	*	8	408.41037c	A	6	408.41058	A	6
408.17424	*	8	408.41037d	A	6	408.41060	A	6
408.17426	*	8	408.41037e	A	6	408.41060a	A	6
408.17432	*	8	408.41037f	A	6	408.41060b	A	6
408.17433	*	8	408.41038	A	6	408.41060c	A	6
408.17434	*	8	408.41038a	A	6	408.41061	A	6
408.17435	*	8	408.41038b	A	6	408.41061a	A	6
408.17436	*	8	408.41038c	A	6	408.41061b	A	6
408.17437	*	8	408.41039	A	6	408.41061c	A	6
408.17440	*	8	408.41039a	A	6	408.41061d	A	6
408.17451	*	8	408.41039b	A	6	408.41061e	A	6
408.17461	*	8	408.41040	A	6	408.41061f	A	6
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408.41003a	*	6	408.41052	A	6	408.41062	A	6
408.41006a	*	6	408.41052a	A	6	408.41063	A	6
408.41001	A	6	408.41052b	A	6	408.41064	A	6
408.41003	A	6	408.41053	A	6	408.41065a	R	6
408.41003b	A	6	408.41053a	A	6	408.41066a	R	6
408.41003c	A	6	408.41053b	A	6	408.41067a	R	6
408.41003d	A	6	408.41053c	A	6	408.41068a	R	6
408.41003e	A	6	408.41053d	*	6	408.41069a	R	6
408.41006	A	6	408.41053e	*	6	408.41070a	R	6
408.41006b	A	6	408.41053f	A	6	408.41070b	R	6

(\* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

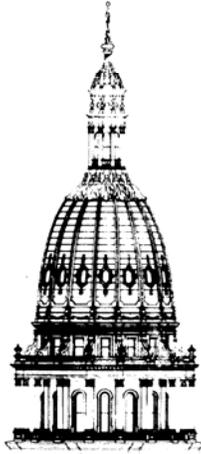
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R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue	R Number	Action	2016 MR Issue
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408.41072a	R	6	408.41085c	A	6	408.41016c	R	6
408.41073a	R	6	408.41085d	A	6	408.41016d	R	6
408.41074a	R	6	408.41085e	A	6	408.41501	A	6
408.41075a	R	6	408.41085f	A	6	408.41505	A	6
408.41080	A	6	408.41085g	A	6	408.41510	A	6
408.41080a	A	6	408.41085h	A	6	408.41515	A	6
408.41080b	A	6	408.41086	A	6	408.41520	A	6
408.41080c	A	6	408.41086a	A	6	408.41521	A	6
408.41080d	A	6	408.41086b	A	6	408.41522	A	6
408.41080e	A	6	408.41086c	A	6	408.41523	A	6
408.41080f	A	6	408.41086d	A	6	408.41524	A	6
408.41080g	A	6	408.41086e	A	6	408.41525	A	6
408.41080h	A	6	408.41086f	A	6	408.41526	A	6
408.41080i	A	6	408.41086g	A	6	408.41527	A	6
408.41080j	*	6	408.41087	A	6	408.41530	A	6
408.41080k	*	6	408.41088	A	6	408.41531	A	6
408.41080l	A	6	408.41089	A	6	408.41540	A	6
408.41080m	A	6	408.41090	A	6	408.41541	A	6
408.41080n	A	6	408.41090a	A	6	408.41542	A	6
408.41080o	A	6	408.41090b	A	6	408.41543	A	6
408.41081	A	6	408.41090c	*	6	408.41550	A	6
408.41082	A	6	408.41090d	*	6	408.41560	A	6
408.41082a	A	6	408.41090e	A	6	408.41561	A	6
408.41082b	A	6	408.41001a	R	6	408.41562	A	6
408.41082c	A	6	408.41004a	R	6	408.41563	A	6
408.41082d	A	6	408.41005a	R	6	408.41564	A	6
408.41082e	A	6	408.41008a	R	6	408.41570	A	6
408.41082f	A	6	408.41009a	R	6	408.41580	A	6
408.41082g	A	6	408.41009b	R	6	408.41590	A	6
408.41083	A	6	408.41011a	R	6	408.41595	A	6
408.41084	A	6	408.41011b	R	6	408.41605	*	4
408.41084a	A	6	408.41011c	R	6	408.41610	*	4
408.41084b	A	6	408.41011d	R	6	436.1311	R	4
408.41084c	A	6	408.41011e	R	6	484.71	*	8
408.41084d	A	6	408.41012a	R	6	484.72	*	8
408.41084e	A	6	408.41013a	R	6	484.73	*	8
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408.41085	A	6	408.41015a	R	6	484.75	*	8
408.41085a	A	6	408.41016a	R	6	792.10101	*	5

(\* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

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792.11503	R	5
792.11504	R	5
792.11505	R	5
792.11506	R	5
792.11507	R	5
792.11508	R	5
792.11509	R	5
792.1151	R	5
792.11511	R	5
792.11512	R	5
792.11513	R	5
792.11514	R	5
792.11515	R	5
792.11516	R	5
792.11517	R	5

(\* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)



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SIGNED INTO LAW OR VETOED  
(2015 SESSION)**

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*Mich. Const. Art. IV, §33 provides: “Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated.”*

*Mich. Const. Art. IV, §27, further provides: “No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.”*

*MCL 24.208 states in part:*

*“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\* \* \*

*(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.*

*(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.”*