

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2012-046 LR

ORR rule set title:

Construction Safety Standard Part 32 Aerial Work Platforms

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Michigan Occupational Safety and Health Administration

Name and title of person completing this form; telephone number:

Deborah Merryfield; 517.636.4579

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

This standard is more restrictive than the Federal OSHA Standard 1926.453 Aerial Lifts in that the rules include the Michigan supplement to the Manual of Uniform Traffic Control Devices. The proposed rules will update the reference to the MMUTCD to the most recent edition adopted by the Michigan Department of Transportation (MDOT). The Federal OSHA requirements are very minimal and have not been updated since 1996.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

This standard is similar to Washington State OSHA Chapter 296-870, WAC “Powered Platforms.” However, Washington State does not reference the Manual on Uniform Traffic Control Devices.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

In an effort not to conflict with MDOT regulations, MIOSHA is referencing the Michigan Manual on Uniform Traffic Control Devices for regulations on traffic control when using an aerial work platform near a roadway.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

Some of the common occupational hazards associated with the use of aerial work platforms include the following:

- The lift tipping-over or a worker falling off the platform if the lift is:
 - Operated in unfavorable weather conditions (i.e. high winds, snow, sleet, hail or rain);
 - Positioned on soft or unlevel ground or surfaces;
 - Positioned on weak utility covers (i.e. sprinkler valve boxes);
 - Overloaded with heavy objects;
 - Used without guardrails;
 - Driven on uneven, unstable ground, while the lift is in an elevated position; and
 - Elevated and the brakes have not been properly set;
 - Stuck by a vehicle.
- Electrocution, if the lift makes contact with overhead electrical or power lines.
- Crushing, if the lift platform comes into contact with overhead structures (i.e. beams, ceilings, etc.)

When aerial work platforms are in use, it is imperative that all traffic control requirements be in

compliance with Part 6 of the 2011 Michigan Manual on Uniform Traffic Control Devices (MMUTCD) to prevent traffic entering the aerial work platform's work zone.

The appropriate use of temporary traffic control will reduce the number of accidents involving aerial work platforms on Michigan roadways, keeping employees and motorists safe.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

Aerial work platforms can be dangerous when not properly maintained and serviced, used inappropriately or used by an untrained operator. According to the federal Bureau of Labor Statistics' (BLS) Census of Fatal Occupational Injuries (CFOI), nationally in 2009, 22 workers were fatally injured while operating a man lift.

Construction Safety Standard Part 32 Aerial Work Platforms adopts by reference the Michigan Manual of Uniform Traffic Control Devices (MMUTCD). The MMUTCD references the Federal MUTCD, which was recently updated. In 2011 the MDOT updated the MMUTCD to include the 2009 edition of the Federal MUTCD. An advisory committee was formed by the General Industry Safety Standards Commission to review the 2011 edition of the MMUTCD. The committee determined that the differences between the 2005 and 2011 edition of the MMUTCD would not affect MIOSHA's ability to reference the MMUTCD in General Industry Safety Part 58 Aerial Work Platforms. Therefore, General Industry Safety Standard Part 58 Aerial Lifts must be updated to reference the 2011 edition of the MMUTCD.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Compliance with the MMUTCD not only protects the operator of the aerial work platform, but also the general public using Michigan's roadways. The 2011 edition of the MMUTCD is already adopted as the official manual for a uniform system of traffic control devices for the state pursuant to authority granted to the Director of the Department of Transportation and the Director of the Michigan State Police (MCL 657.608), so Construction Safety Standard Part 32 Aerial Work Platforms does not increase the burden on those required to comply.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

In 2011 the MDOT updated the MMUTCD to include the 2009 edition of the Federal MUTCD. Currently, Construction Safety Standard Part 32 Aerial Work Platforms adopts by reference the 2005 edition of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD), which is no longer in effect.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

The cost of printing and distributing new standards is estimated to be about \$200.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

The cost of printing and distributing standards is figured into MIOSHA's current budget.

Impact on Other State or Local Governmental Units:

(10) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

This is a minor change to amend the reference to an obsolete MDOT manual to reflect the most current addition. There should be no additional cost to state and local government agencies as a result of amending these rules.

(11) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

This is a minor change to amend the reference to an obsolete MDOT manual to reflect the most current addition. There should be no additional duties or responsibilities imposed on local government agencies as a result of amending these rules.

(12) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

This is a minor change to amend the reference to an obsolete MDOT manual to reflect the most current addition. There should be no additional cost to state and local government agencies as a result of amending these rules.

Rural Impact:

(13) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

These rules will not have a disproportionate impact on individuals based on their geographic location.

Environmental Impact:

(14) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

These rules will not have an impact on the environment.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

(15) Describe whether and how the agency considered exempting small businesses from the proposed rules.

The 2011 edition of the MMUTCD is available at no cost from MDOT. Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT regardless of the size of business.

(16) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

The 2011 edition of the MMUTCD is available at no cost from MDOT. Appropriate use of temporary

traffic control on Michigan roadways is already required by MDOT regardless of the size of business.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

MIOSHA is not sure how many small businesses utilize aerial lifts, but the appropriate use of temporary traffic control on Michigan roadways is already required by MDOT regardless of the size of business.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

MIOSHA did not establish differing compliance guidelines for small businesses.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

MIOSHA did not establish differing compliance guidelines for small businesses.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

MIOSHA did not establish differing performance standards for small businesses.

(17) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The 2011 edition of the MMUTCD is available at no cost from MDOT. Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT regardless of the size of business.

(18) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

No reports are required by the proposed rules.

(19) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The MIOSHA Consultation Education and Training Division offers training services to small businesses at no cost in order to share resources and skill competencies. No additional equipment or supplies should be needed to comply with these rules.

(20) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

No legal, consulting, or accounting services are needed to comply with these rules.

(21) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The MIOSHA Consultation Education and Training Division offers training services to small businesses at no cost in order to share resources and skill competencies. No additional equipment or supplies should be needed to comply with these rules. Small businesses should not be adversely affected by these rules.

(22) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT regardless of the size of business. It is not feasible for MIOSHA to enforce lesser standards on small businesses in regards to temporary traffic control devices.

(23) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Exempting small businesses from complying with the temporary traffic control requirements would create a hazard Michigan motorists.

(24) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

MIOSHA formed an advisory committee to review the 2011 edition of the MMUTCD and update references to the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms. The advisory committee consisted of 2 labor representatives and 2 management representatives. One management representative was from a small business, OEMC Rentals in Livonia, Michigan.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(25) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT. No additional cost is placed on businesses by referencing the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms.

(26) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT. No additional cost is placed on businesses by referencing the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms.

(27) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT. There is no cost reduction to businesses by referencing the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms.

(28) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT. By referencing the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms the standard becomes as effective as MDOT regulations. This will avoid confusion for motorists and employees/employers relying on traffic control devices.

(29) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT. By referencing the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms the proposed rules do not negatively or positively impact business growth or job creation.

(30) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

These rules will not have a disproportionate impact on individuals based on their industrial sector, segment of the public, business size, or geographic location.

(31) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

U.S. Department of Labor, National Bureau of Labor Statistics Data (2009)
 MIOSHA Aerial Work Platforms Advisory Committee

Alternatives to Regulation:

(32) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

In 2011 the MDOT updated the MMUTCD to include the 2009 edition of the Federal MUTCD. Currently, Construction Safety Standard Part 32 Aerial Work Platforms adopts by reference the 2005 edition of the Michigan Manual of Uniform Traffic Control Devices (MMUTCD), which is no longer in effect. Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT. MIOSHA did not see a reasonable alternative to updating the reference to the MMUTCD in Construction Safety Standard Part 32 Aerial Work Platforms.

(33) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT.

(34) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Appropriate use of temporary traffic control on Michigan roadways is already required by MDOT.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

10/23/2012

Date RIS approved:	10/23/2012
ORR assigned rule set number:	2012-046 LR

Date of disapproval:	Explain:
More information needed:	Explain:

(ORR-RIS January 2012)