

Legislative Analysis



CHRISTMAS TREE FARMS UNDER MIOSHA

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House Bill 4307 (Substitute H-2)
Sponsor: Rep. Jon Bumstead
Committee: Regulatory Reform

First Analysis: 5-19-11

BRIEF SUMMARY:

House Bill 4307 (H-2) would amend the Michigan Occupational Safety and Health (MIOSH) Act by changing the classification system used to define agricultural operations from the Standard Industrial Classifications to the North American Industry Classification System (NAICS). This would broaden the definition of agricultural operations to include those associated with Christmas tree operations. Currently, Christmas tree farmers are classified under general industry safety standards.

FISCAL IMPACT: Reclassifying the production of Christmas trees as an "agricultural operation" under the act would not likely have a significant budgetary impact on the state or local units of government.

THE APPARENT PROBLEM:

According to committee testimony, a fatal accident at a Christmas tree farm in northern Michigan, where a 22- year-old laborer was killed, led to an investigation by the Michigan Occupational Safety and Health Administration¹. When the farmer received citations it was discovered that MIOSHA does not classify Christmas tree farms under safety standards for agricultural operations, but rather under general industry standards. Upon completion of the investigation the farm owner was issued what is known as "Serious" citations by the General Industry Safety and Health Division. Members of the Christmas tree industry were surprised to find they were not classified as an agricultural operation, as they had been operating under that assumption.

The MIOSH Act currently defines agricultural operations as the work activity designated in major groups 01 and 02 of the Standard Industrial Classification (SIC) manual, United States Bureau of the Budget, 1972 edition. As applied, this definition does not encompass modern commercial Christmas tree farming operations. Apparently SIC standards have not kept up with modern farming operations. The North American Industrial Classification System (NAICS), which is the classification used by the federal program, would encompass modern agriculture operations, including Christmas tree operations.

¹ MIOSHA Inspection Number: 308835958
Michigan Fatality Assessment and Control Evaluation (MIFACE) Reference 07MI121

In a letter dated February 18, 2011, the Michigan Farm Bureau and the Michigan Christmas Tree Association asked MIOSHA for a declaratory ruling to be made on the classification of Christmas tree farms². An official declaratory ruling has not been issued to date. Some believe references in the MIOSH Act should be changed to reflect the NAICS standards, rather than the SIC standards, in order to make it compatible with federal OSHA standards.

THE CONTENT OF THE BILL:

House Bill 4553 (H-2) would amend Section 4 of the Michigan Occupational Safety and Health Act by redefining agricultural operations to mean the work activity designated in the North American Industry Classification System, subsectors 111, 112, and 115, excluding subsector 1153, United States Census Bureau, 2007 edition, and includes work activity associated with cultivated Christmas trees.

MCL 408.1004

BACKGROUND INFORMATION:

According to the U.S. Census Bureau, the North American Industrial Classification System is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the guidance of the Office of Management and Budget, and adopted in 1997, to replace the Standard Industrial Classification System. It was jointly developed by the U.S. Economic Classification Policy Committee, Statistics Canada, and Mexico's Instituto Nacional de Estadística y Geografía, to allow for a high level of comparability in business statistics among the North American countries.³

The relevant NAICS subsections are explained below:

- 111 Crop Production: Industries in this subsector grow crops mainly for food and fiber and encompasses farms, orchards, groves, greenhouses, and nurseries. These industries are grouped together by similarity in production activity. Operations are classified under this subsector when crop production (value of crops for market) accounts for one half or more of the operation's total agricultural production.

² The Administrative Procedures Act, Section 63(MCL 24.263) allows for interested persons to request a declaratory ruling from a state agency as to the applicability of a statute administered by the agency. To date, the Department of Licensing and Regulatory Affairs (LARA) has not issued an official declaratory ruling on this matter. However, during testimony before the House Regulatory Reform committee on May 11, 2011, MIOSHA Director Doug Kalanoski indicated the department supported changing the classification of Christmas tree farms from general industry to agricultural operations.

³ <http://www.census.gov/eos/www/naics/>

- 112 Animal Production: Industries in this subsector raise or fatten animals for sale and include ranches, farms, and feedlots.
- 115 Support Activities for Agriculture and Forestry: These industries provide support services that are essential to agricultural and forestry production. Operations that mainly perform activities independent of the agriculture or forestry producing establishment are classified under this subsector.⁴

ARGUMENTS:

For:

The Christmas tree industry offers three main arguments to support its position. First, they claim NAICS standards are more inclusive and would encompass agricultural activities that are currently excluded under SIC. Christmas tree farms perform a variety of activities that are agriculturally based (soil testing, weed control, etc.) and many believe the industry should be evaluated by the types of activities it engages in. NAICS encompasses modern agricultural practices and will bring Michigan in line with national OSHA standards for agriculture.

Second, proponents say that all other major Christmas tree producing states classify production activities as agricultural activities. It is argued Michigan farmers are experiencing an uneven playing field and are handicapped by more stringent safety regulations than their competitors. This legislation is seen as a necessary change in order to allow Michigan growers to remain competitive. It is important to note the decision in United States Department of Labor v North Carolina Growers Association. This case arose after a North Carolina District Court ruled a Christmas tree farm was not an agricultural operation and was subject to the overtime provisions of the Fair Labor Standards Act. The Court of Appeals overturned this ruling and found Christmas tree farming is an agricultural operation and therefore exempt from paying its seasonal employees overtime wages. In issuing its opinion the court concluded if the product produced is an agricultural product then the process by which it is cultivated, grown, and harvested is considered agriculture.

Lastly, it has been stated the Christmas tree industry would need to make several changes if it is to be classified as general industry and must comply with general industry standards. Examples include modifications to storage buildings and workshops, power cutters and mower changes, and the installation of mobile temporary fall protection systems and structures for loading and unloading trucks and trailers. These modifications could prove costly and place small operations at a competitive disadvantage or even force them to close their business. Additionally, it has been difficult for the industry to adopt safety training programs because of the discrepancy in farming operation classifications. For example, a tree farmer and a hog farmer could both use tractors to complete similar tasks.

⁴ [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart_code=11&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart_code=11&search=2007%20NAICS%20Search)

However, they could face different safety regulations because they are classified differently under the SIC system.

Against:

There was no opposition to this legislation at the committee level.

POSITIONS:

The Michigan Department of Agriculture and Rural Development supports the bill.
(5-11-11)

The Michigan Department of Licensing and Regulatory Affairs supports the bill.
(5-18-11)

The Michigan Christmas Tree Association supports the bill.(5-11-11)

The Michigan Farm Bureau supports the bill. (5-18-11)

The Michigan Nursery and Landscape Association supports the bill. (5-11-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.