

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:

2010-023 LR

ORR rule set title:

Building Officials, Plan Reviewers, and Inspectors (R 408.30001 to R 408.30055)

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Bureau of Construction Codes

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

Shannon Matsumoto, Rules Analyst; (517) 241-6312

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.

The Building Officials and Inspectors Registration Act (1986 PA 54) regulates and registers building officials, plan reviews, building inspectors, electrical inspectors, mechanical inspectors and plumbing inspectors. Section 5 of the Act requires the State Construction Code Commission to promulgate rules for the administration of the Act (MCL 338.2305). There are no federal rules or standards that pertain to the regulation and registration of these professions.

(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.

Wisconsin requires 24 hours of educational requirements for provisional registration. This exceeds Michigan’s proposed 18 hours of educational requirements for provisional registration. None of the other Great Lake states have educational requirements.

(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.

There are no federal, state, or local laws, rules, or other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

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?

R 408.3002 – A new rule is being added to prohibit building officials, plan reviewers, and inspectors from serving as a member on a construction board of appeals or contract for work in a governmental subdivision where they provide code enforcement services. This rule clarifies the requirements of 1972 Public Act 230. The construction board of appeals members must be qualified, and the board needs to have independence in judgment from the code enforcement department.

R 408.3007 – The rule currently requires the commission to consider recommendations for acceptance of educational training programs, tests, and instructors submitted by certain entities, including the advisory board. The reference to this board is being deleted from the rules because it has not been utilized since the early 1990s. The advisory board’s initial work of rule development was completed by that time. The Bureau of Construction Codes staff now makes recommendations for acceptance of educational training programs, tests, and instructors to the Construction Code Commission.

R 408.30016 – The rule permits the commission to withdraw the approval of an instructor when the approval was issued in error or was issued on the basis of incorrect information; or when the instructor

is found to be in violation of the rules. This rule is being revised to add that the commission may withdraw this approval when an instructor has failed to pay a required fee. The new rule is also trying to prevent applicants from not providing the minimum number of applications for each instructor and each course application when multiple applications are submitted. Every individual instructor and application requires a fee for each application submitted. Additionally, if the department receives information that an instructor has not updated a course to the current code or properly identified changes in applicable law, the commission may withdraw its approval.

R 408.30022 – The rule requires fees to be charged in accordance with the published rates of the commission. The rule is being revised to add that a failure to pay a required fee will be grounds for the disapproval or withdrawal of a previous approval. The fee provides consistency with other codes, rules, and laws administered by BCC. For example, a building permit is not considered approved or in issued status until it has been entirely approved and meets the code, applicable laws, and ordinances, and the fees have been paid.

R 408.30031 - Currently, applicants may qualify for provisional registration as an inspector based on experience only. The proposed rule will add a requirement that applicants must also verify they have completed not less than 18 hours of education in an approved program. The education requirement will include training in administration, communication, technical, plan review, and specialty areas. It is expected the training will augment inspectors' qualifications by providing basic knowledge and understanding of the building, electrical, mechanical or plumbing code. This will result in more thorough inspections and increased public safety.

R 408.30037 - Is revised to clarify experience and education requirements. Table 31 and subrule (5) apply to all inspector categories and the plan review category. Rule 37 has been revised and provides more clarity and recognizes additional types of experience and certification that have been more recently developed, thus providing greater opportunities for applicants while maintaining a high level of experience and qualification. Additionally, Rule 37 has been revised to drop the 12 year language from 37 (1)(a) that has prevented some qualified individuals from being approved.

R 408.30043 – The rule requires an applicant for registration as a provisional mechanical inspector to have four years of experience in either heating ventilation and air conditioning or hydronic heating and process piping or a combination of both. The rule is being revised to require an applicant, instead, to possess for at least one year, a mechanical license in three or more specific licensing categories. This revision is being made to ensure that qualified inspectors are better qualified, which will increase public safety. In addition, the rule is being revised to eliminate the reference to “journey level” in the rule because the Forbes Mechanical Contractors Act does not have a journey-level license. This rule was revised to insure that mechanical inspector applicants have minimal experience in the base categories where the majority of mechanical inspections occur.

R 408.30049 – The rule currently establishes requirements for registration as a provisional plan reviewer, including having four years of experience as a building contractor in the general building construction field, have successfully completed a recognized curriculum in architecture or engineering at a higher education institution, and have two years of experience in the construction trades and possess either a license in the electrical trade, licensure in the plumbing trade, or four years of experience in one or more of the work classifications defined in the Forbes Mechanical Contractors Act. The rule is being revised to establish consistency with the experience and qualification requirements for building, electrical, mechanical, and plumbing inspector applicants.

R 408.30052 – The rule currently establishes requirements for re-registration as a building official, plan reviewer, or inspector. The changes to this rule are intended to clarify items that were not previously clear in the current rules. This will provide more consistent application of the rules and provide clear guidelines for when a registrant is on medical or military leave, or when an inspector doesn't apply for

re-registration. It also clarifies that their trade license must be maintained in accordance with trade license requirements.

(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?

There is no harm anticipated from *behavior* related to the proposed rules and there is little likelihood that harm will occur in the absence of the proposed rules. The changes being made to the rules clarify education and experience application requirements and add training and educational requirements designed to improve the level of service to and safety of the public. Inspectors who are initially approved by the commission would have received preliminary training and thus be much more likely to properly administer and enforce the code when they are initially employed. If these rules are not adopted, their level of training prior to taking the job would remain as it currently is, none required.

(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.

The proposed rules will provide a better measure of competence to assure new inspectors and plan reviewers have the proper skills to correctly and appropriately apply the code. The proposed rules also acknowledge alternative sources of experience, including experience gained while working in other states.

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

There are no rules that are obsolete, unnecessary, or can be rescinded.

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 bureau currently reviews applications for licenses and experience, so there is no additional fiscal impact to the agency beyond the current operational costs.

(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 proposed rules will not result in additional fiscal impact on the agency. Thus, there is no need for additional agency appropriation or funding source as a result of the changes to the rules.

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.

There is no expected increase or decrease in revenues to other state or local governmental units as a result of the rules.

R 408.30031 - Adds educational requirements to obtain provisional registration in order to provide basic knowledge for thorough inspections and understanding of the code. It is estimated tuition for the educational requirements will increase the cost of entering the profession by approximately \$400. The cost of the training affects a relatively small population of approximately 20 new registered inspectors per year. A local governmental unit that employs a building official, plan reviewer, and inspectors may choose to pay for their employees' training or it may require the individual to bear the cost.

(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.

A local governmental unit will have to ensure that a newly hired inspector submits an application for registration within 30 days of his or her hire date. A local government should also monitor their existing inspectors to insure they remain properly registered and licensed. These are not new responsibilities, however.

(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).

There is no appropriation to state or local governmental units required.

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).

The proposed rule changes affect the state of Michigan as a whole. There is no specific rural impact.

Environmental Impact:

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

The proposed rules do not have any 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.

Generally, the bureau does not expect small businesses to be affected by these proposed rules. However, a small business functioning as an education provider could possibly see an increase in revenue if they were approved to conduct classes.

(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.

Small businesses are not expected to be affected by these proposed rules. If a small business became an approved education provider, it could realize additional revenue.

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

Generally, the bureau does not expect small businesses to be affected by these proposed rules. However, a small business functioning as an education provider could possibly see an increase in revenue if it were approved to conduct classes.

(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.

Generally, the bureau does not expect small businesses to be affected by these rules because the required reporting, record-keeping, and other administrative costs are unchanged in the proposed rules. A small business that was an education provider could mail or fax compliance or required reporting documents to the bureau's attention at minimal cost.

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

The compliance and reporting requirements are unchanged, except that the bureau has added optional certifications as a means to become qualified in some registration classifications. This will make it easier for some qualified individuals to become registered under these rules.

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

There are no design or operation standards in the proposed rules.

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

The proposed rules have no disproportionate impact on small businesses because of their size or geographic location.

(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).

If a small business becomes an approved education provider and conducts classes, it will be required to mail attendance rosters to the bureau as proof of attendance.

(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.

Involvement as an education provider is voluntary. If a small business chooses to become a provider, there is a \$100 fee to be approved as an instructor in a particular subject, and a \$150 fee for approval of each class. The instructor approval is a one-time-only fee; classes must be re-approved every three years. Because education providers charge tuition for their classes, they will be able to recover these costs and other expenses associated with developing and conducting classes.

(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).

There are no legal, consulting, or accounting services costs that small businesses would incur in complying with the proposed rules.

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

Involvement as an education provider is voluntary. If a small business chooses to become a provider, there is a \$100 fee to be approved as an instructor in a particular subject, and a \$150 fee for approval of each class. The instructor approval is a one-time-only fee; classes must be re-approved every three years. Because education providers charge tuition for their classes, they are able to recover these costs and other expenses associated with developing and conducting classes.

(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.

The proposed rules apply equally to individuals required to be registered as building officials, inspectors, and plan reviewers. There is no anticipated cost to the agency for administering and enforcing the proposed rules.

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

Generally, the bureau does not expect small businesses to be affected by the proposed rules. If a small business were approved as an education provider, setting lesser standards for a small business has the potential to lower the level of health, safety, and welfare protection to the public.

(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).

The bureau involved small businesses through the rules review committee process. Small business membership on the committee included commercial building contractors as well as representatives of the following organizations: Air Conditioning Contractors of America, Wolverine Engineers & Surveyors, Inc., Architects, Hansen Marketing Services Inc. (as general public), Michigan Home Builders Association, and Michigan Plumbing and Mechanical Contractors Association.

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.

There are no actual statewide compliance costs of these rule amendments on small businesses or groups.

(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?

R 408.30031 adds educational requirements for provisional registration to provide basic knowledge for thorough inspections and understanding of the code. The proposed rules provide basic knowledge for thorough inspections and understanding of the code, provide better qualified inspectors, a safer built environment, and increased public safety. It is estimated it will cost an applicant \$400 to take the training for the hours required in the proposed rules. The cost of the training affects a relatively small population of approximately 20 new registrants per year.

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

There are no expected cost reductions to businesses, individuals, or groups of individuals as a result of the proposed rules.

(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.

The proposed rules will provide for better qualified building officials, plan reviewers, and inspectors who have increased understanding of the construction codes and how to apply them during inspections. This is expected to result in more thorough inspections and increased public safety.

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

The proposed rules provide communities with more hiring options by broadening the pool of qualified

building officials, inspectors, and plan reviewers. Additionally, the training requirements for new applicants will result in better qualified building officials, inspectors, and plan reviewers.

(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.

Registered code officials, plan reviewers, and code inspectors are affected by changes to these rules as a result of the registration requirements in 1986 PA 54.

(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).

The bureau relied upon the rules review committee in compiling the regulatory impact statement, including determining the existence and extent of the impact of these proposed rules and the cost-benefit analysis of these proposed rules. For R 408.30031, Standards for provisional registration, the bureau, with the help of the committee, developed core competencies for knowledge necessary to perform thorough inspections and understanding of the code, and based on current market costs determined the estimated cost to applicants for the training.

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.

There are no reasonable alternatives to the proposed rules that have been identified that would achieve the same or similar goals.

(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.

The proposed rules do not require that state government conduct the training. With approval of the instructor's qualifications and approval of the class materials, the rules provide for training from private markets such as inspector organizations; township, municipal, and county organizations; professional and trade organizations; home study courses, such as videotapes, audiocassettes, and correspondence courses; private contractor technical update courses; university, college, and community college courses; department of labor sponsored training programs; and training sponsored by nationally recognized model code promulgating organizations such as the International Code Council.

(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.

There were no significant alternatives presented for the bureau and rules review committee to consider.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

8/1/2012

Date RIS approved:

8/2/2012

ORR assigned rule set number:

2010-023 LR

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

(ORR-RIS January 2012)