

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Construction Codes

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2021-49 LR

Title of proposed rule set:

Construction Code - Part 10a. Michigan Energy Code

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no federal rules or standards set by a state or national licensing agency or accreditation association. The rules update the International Energy Conservation Code (IECC) code as required by 1972 PA 230, section 4(5).

A. Are these rules required by state law or federal mandate?

These rules are required by state law in MCL 125.1504(5), Stille- DeRossett-Hale Single Construction Code Act, 1972 PA 230. There are no federal mandates.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There are no federal standards.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules incorporate by reference the 2021 edition of the IECC with Michigan amendments, deletions, and additions published by the International Code Council (ICC). All surrounding Great Lakes states follow the International Energy Conservation Code, however, Michigan's rules look to be more stringent and follow newer codes than similar states.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The IECC is a nationally recognized model code used through the United States as a minimum standard. The Michigan rules do exceed the standards of any of the other Great Lake States, because the surrounding Great Lakes states still follow the 2007, 2010 and 2013 IECC. There are costs of deviation from other Great Lakes States because the State of Michigan is using the newest Energy Code, which accounts for new technologies in energy use and conservation. Once the other Great Lakes States adopt the newest Energy Code or newer than what they currently use, those states will fall into line with what Michigan is currently adopting. The State of Michigan will be at the forefront of the most up to date Energy Code. Regardless of which Energy Code other states use, structure owners within the State of Michigan only use the Energy Code when building a new structure or renovating an existing structure. The costs the structure owner will realize is predicated upon the size of the structure. Therefore, the smaller the size of the new build or renovated structure, the less it will cost that owner.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

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

A. Explain how the rules have 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 with the proposed rules.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply to this ruleset because there are no applicable federally mandated standards.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply because there is no applicable federal standard that regulates the Energy Code.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

MCL 125.1504(5) of the Stille-DeRossett- Hale Single State Construction Code Act requires the department to add, amend and rescind rules to update the IECC code not less than once every 3 years to coincide with the national code change cycle.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The proposed rules will adopt the 2021 edition of the IECC with amendments, deletions, and additions deemed necessary for use in Michigan.

B. Describe the difference between current behavior/practice and desired behavior/practice.

To comply with the requirements of the Stille-DeRossett- Hale Single State Construction Code Act the proposed rules will adopt the 2021 edition of the IECC with amendments, deletions and additions deemed necessary for use in Michigan.

C. What is the desired outcome?

The desired outcome is to bring the administrative application of the Energy Code rules in line with any current and upcoming rules, to eliminate unnecessary requirements in the code, and to have an easier interpretation and clarification of these rules.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

MCL 125.1504(5) of the Stille-DeRossett- Hale Single State Construction Code Act requires the department to add, amend and rescind rules to update the IECC code not less than once every 3 years to coincide with the national code change cycle. Without implementation of the proposed rules businesses may not be able to take advantage of new methods, materials, or technologies.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The Stille-DeRossett-Hale Single State Construction Code Act requires the department to update the codes not less than once every 3 years to coincide with the national code change cycle.

8. Describe how the proposed rules 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.

R 408.31087 is administrative in nature and is amended to bring the administrative application of the IECC code rules in line with actual practices. Once the administrative rules are in line with the actual practices this will 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.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The following rules are unnecessary because they are outdated and will be rescinded: R 408.31087a, R 408.31087b, R 408.31088, R 408.31090, R 408.31091, R 408.31092a, R 408.31094, R 408.31095, R 408.31096, R 408.31097, R 408.31098, R 408.31098a, and R 408.31098b.

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, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

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

There is no additional fiscal impact to the agency beyond the current operational costs.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

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

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

R 408.31087 is administrative in nature and is amended to bring the administrative application of the IECC code in line with actual practices, as well as compliance with the Stille- DeRossett-Hale Single State Construction Code Act requirements. Although there is no administrative burden on the individual, there will be an increase in cost due to inflationary expenses for material costs in new build structures or renovations.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The amendments will clarify code requirements which will make compliance less burdensome. The individual may realize a net savings in energy costs pursuant to these requirements.

Impact on Other State or Local Governmental Units

13. 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 for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. 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 anticipated increase or decrease in revenues to other state or local governmental units as a result of the proposed rules. Although state and local governmental units will incur upfront, higher costs, these expenses will be offset by the long-term financial savings as a result of this rule set. This bureau has no way of knowing what the additional specific expenses will be, as each individual structure will be unique to the needs of the governmental unit.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

R 408.31087 is administrative in nature and is amended to bring the administrative application of the IECC code in line with the actual practices. It is anticipated that a local government unit would incur added responsibility due to the proposed rules. If a local unit of government has received the ability to administer and enforce the code under PA230 they would be responsible for learning, understanding, and applying the new code accurately.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules would require additional or new responsibilities on behalf of governmental units to be in continued compliance with the rules. They would be responsible for learning, understanding, and applying the new code accurately which would require training of all applicable staff.

15. 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 rules.

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

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules affect the state of Michigan as a whole. There is no specific rural impact, rules are applicable to both urban and rural new build structures alike. Pursuant to the Stille- DeRossett-Hale Single State Construction Code Act, there continues to be an agricultural exemption to the applicable construction codes. Therefore, there is no specific rule impact as these rules are applicable to urban and rural new building structures alike.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

Pursuant to the Stille- DeRossett-Hale Single State Construction Code Act, there is an agricultural exemption to the applicability of the construction codes. For those reasons, it is unlikely that the proposed rules will have any impact on public or private interests in rural areas. This is because the aforementioned act exempts the requirements to obtain a permit and inspection.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

This is unknown. The agency does not have the scientific knowledge to determine what may or may not impact the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

Because the Stille-DeRossett-Hale Single State Construction Code Act does not allow for exemption of small businesses from the Michigan Energy Code, the agency has no authority to exempt small businesses from the proposed rules.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules 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 rules 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 agency was obligated to follow the Stille-DeRossett-Hale Single State Construction Code Act, which is applicable to scenario “(b) the reason such a reduction was not lawful or feasible” as the act did not provide for such an exemption within the aforementioned act.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

According to the most current federal data available, Michigan has 765,487 small businesses. These businesses will be affected by this rule set. Only when a small business builds a new structure and completes renovations would they be affected by the proposed rules.

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

There is no additional reporting, record keeping, or other administrative costs associated with the implementation of the proposed rules.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

A small business that plans to construct a new build structure will not encounter reporting requirements.

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

R 408.31087 adopts by reference the 2021 IECC code which is a nationally recognized model code. For that reason, the agency need not establish performance standards, as the design and operation standards are established through the 2021 IECC code.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The impact of these proposed rules will be directly correlated to the size of the new build structure or renovation a small business chooses to design. The larger the square footage of the new build structure or renovation, the higher the material costs and other associate expenses will incur. Any small business already established in a preexisting structure or moves into a preexisting structure will realize no impact by these proposed rules.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The agency has not received any reports regarding the estimated costs to small businesses. There are no anticipated reports or increased costs to small businesses that are required to comply with the proposed rules.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The agency is unable to estimate compliance costs due to many variables, which are at the discretion of a small business. In particular, the size of the new build structure, or its renovation, will dictate the ultimate expenses to the small business. Additionally, inflationary costs and specific material selections will factor into the expenses for the small business.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The agency is unable to estimate legal, consulting or accounting costs due to many variables, which are at the discretion of a small business. In particular, the size of the new build structure or its renovation will dictate the ultimate expenses to the small business. Additionally, inflationary costs and specific material selections will factor into the expenses for the small business.

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

The agency is unable to estimate what, if any, economic harm may result due to the many variables, which are at the discretion of a small business. In particular, the size of the new build structure or its renovation will dictate the ultimate expenses to the small business. Additionally, inflationary costs and specific material selections will factor into the expenses for the small business.

25. 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 do not exempt or set lesser standards for compliance by small businesses. There is no additional cost to the agency beyond the current operational cost.

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

There is no public interest at play as it relates to exempting standards of compliance for small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The bureau involved small businesses through the Code/Rule Change Proposal Form, as well as at the in person Public Advisory Meeting, the in person Public Hearing, along with having the ability to submit written documents to the bureau.

A. If small businesses were involved in the development of the rules, please identify the business(es).

The agency received proposed rules from the plumbing trade, electrical trade, mechanical contractors, building inspectors, residential builders, energy rating companies, and small home and residential builders.

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

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The agency is unable to estimate compliance costs due to many variables, which are at the discretion of a small business. In particular, the size of the new build structure or its renovation will dictate the ultimate expenses to the small business. Additionally, inflationary costs and specific material selections will factor into the expenses for the small business. Groups will not be impacted with the rule amendments.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The businesses and groups who will be directly affected by our proposed rules are those entities who either build a new structure or renovate an existing structure to work in or renovate an existing structure. Also, contractors will be affected by these proposed rules because they will be hired to construct pursuant to the new energy requirements. The businesses or groups who will directly benefit from the proposed rules will be the individuals producing the energy products and commercial and residential contractors because they will be able to profit through the hired work to be performed based upon the new energy code requirements. Additionally, structure owners will realize an energy costs savings long-term, as these standards are implemented through new build or renovations. The individuals who will build a new structure or renovate an existing structure will bear the cost of the new standards.

B. 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.

The agency is unable to estimate costs due to many variables which are at the discretion of a business. In particular, the size of the new build structure or its renovation will dictate the ultimate expenses to the business. Additionally, inflationary costs and specific material selections will factor into the expenses for the business. Groups will not be impacted with the rule amendments.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

In regard to the regulation of individuals, the agency is unable to determine what compliance costs they may incur. If a building official takes an energy code continuing education course from the agency, it will cost the regulated individual zero dollars. On the other hand, for profit companies could offer the same energy code continuing education course for a fee. If the regulated individual chooses to take the for-profit code continuing course the agency would not know what that compliance cost would be to the regulated individual. The agency leaves it to the discretion of the regulated individual to choose how they obtain their training. As for the public, the agency is unable to estimate costs due to many variables, which are at the discretion of an individual. In particular, the size of the new build structure or its renovation will dictate the ultimate expenses to the individual. Additionally, inflationary costs and specific material selections will factor into the expenses for the individual.

A. How many and what category of individuals will be affected by the rules?

It is anticipated that roughly 100,000 plus skilled trades licensees and other regulated individuals (including architects and engineers) will benefit from these proposed rules, but only when new build structures or renovations are contracted for.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The quantitative impact will be unknown as the agency is unable to estimate costs due to many variables, which are at the discretion of the individual. In particular, the size of the new build structure or its renovation will dictate the ultimate expenses to the individual. Additionally, inflationary costs and specific material selections will factor into the expenses for the individual. The qualitative impact to the individual will result in a cost savings in the long-term.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

The cost reductions will depend upon if the individual, business, group of individuals, or governmental units build a new structure or renovate an existing structure where they are located. If the aforementioned groups stay within their existing building and never make changes to said building they will neither incur costs nor realize savings based on this new set of rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary and direct benefits of the proposed rules include things such as long-term costs savings, a reduction in the carbon footprint, and other energy savings to the owners of new build structures and renovations. The secondary or indirect benefits of the proposed rules are the skilled trade professions will benefit from the contracted work that will result from an updated energy code.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will benefit the skilled trades profession, as well as the energy related industry due to the new requirements, which are established in this rule set.

33. 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.

There may be some individuals or businesses which may not build a new structure or renovate an existing structure because they will not wish to implement the new energy code standards. They may determine the existing structure in which they are located satisfies their immediate needs. This may result in higher energy costs for certain individuals and businesses who decide not to build a new structure or renovate an existing structure.

34. 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 the proposed rules and a cost-benefit analysis of the proposed rules.

The bureau consulted with the following trade boards; Construction Code Commission, the Plumbing Board, the Electrical Administrative Board, the Mechanical Contractor Board, the Residential Builders & Maintenance and Alteration Contractors Board as well as reviewed comments from the Code/Rule Proposal Form to compile the initial draft. Next, the bureau held a 3-day public advisory meeting where all stakeholders were invited to discuss with the agency any and all aspects, concerns, and goals as it relates to the final work product of these rules. Bureau staff considered all comments received during the drafting process, including determining the existence and extent of the impact of the proposed rules and the cost benefit analysis of these proposed rules. Examples of stakeholders who helped contribute to this regulatory impact statement include but were not limited to, The Michigan Home Builders Association, Consumer Energy & DTE, Municipalities (specifically the City of Grand Rapids), building officials (inspectors), ASHREA, Architects and Engineers, Masonry Institute and energy home raters.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The bureau relied on the commission and stakeholders when determining the existence and extent of the impact of the proposed rules.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

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

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

Although the agency does not believe any statutory amendments are necessary to the Stille-DeRossett-Hale Single State Construction Code Act, individuals who believe the energy code updates cause additional expenses to be incurred may wish to lobby the legislature to extend the energy code adoption to greater than every three years.

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

The bureau is unaware of similar programs or private market-based systems in other states.

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

The most significant alternative, which was presented to the agency and not adopted, was the proposition to require all new structures or renovations be exclusively electric in nature. This would mean no use of propane or natural gas. This would result in extraordinarily expensive construction beyond the current normal practice. It also eliminates possible cheaper modes to energy. At best it creates a monopoly and at worst this alternative would grind new construction to a halt. As of May 16, 2022, the Midcontinent Independent System Operator is preparing for a projected short fall in energy capacity for June, July and August of 2022.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are no instructions regarding the method of complying with the rules.