

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 Professional Licensing

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2019-114 LR

Title of proposed rule set:

Real Estate Appraisers – General Rules

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.

R 339.23104: This proposed rule allows for an exemption from the Uniform Standards of Professional Appraisal Practice (USPAP) Standard 3 and Standard 4. USPAP Standard 3 and 4 establish requirements for the development and reporting of an appraisal review assignment involving a real property or personal property appraisal. A Standard 3 review and Standard 4 report include a more exhaustive process. The existing rule provides an exemption from utilizing USPAP Standard 3 for board members or investigators reviewing complaints or testifying at administrative hearings on the Department's behalf. These individuals review appraisals as a result of complaints that are filed with the Department. The appraisal complaint reviewers determine whether the appraisal is compliant with USPAP standards. They do not determine an opinion or value. Further, the appraisal complaint reviewers do not provide a review that is relied upon for any financial transaction in the private sector. A Standard 3 review is not necessary for the appraisal complaint review and disciplinary action process. Requiring a Standard 3 review and Standard 4 report negatively impacts the efficiency and the speed of the appraisal complaint review process. The proposed rule adds an exemption to Standard 4 for board members and investigators, which is the reporting portion of the review and report process.

Further, USPAP has a jurisdictional exception rule. This rule exempts appraisers from the part or parts of USPAP that are precluded by law or regulation. The rule applies anytime there is a conflict between the requirements of USPAP and the applicable law or regulation of a jurisdiction. Therefore, based on the reasoning above, the Department would like to provide this exemption to assist with efficiency in complaint review.

R 339.23203a: This proposed rule clarifies the requirements and role of a supervisory certified appraiser of trainee appraisers and provides for a program to allow a supervisory appraiser to supervise more than 3 trainee appraisers at the same time. The Real Property Appraiser Qualification Criteria (AQB criteria) published by the Appraiser Qualifications Board of the Appraisal Foundation, The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria, effective May 1, 2018, limits supervisory appraisers to supervising no more than three trainee appraisers at one time unless a state program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

R 339.23209: This proposed rule clarifies section 2625(2) of the Occupational Code (Code), MCL 339.2625, that allows for a nonresident temporary permit holder. The proposed rule provides the process for an extension of the nonresident temporary permit and limits the permittee to finish work only on the same temporary assignment that was the subject of the initial temporary permit.

R 339.23326: This proposed rule allows for continuing education (CE) credit of up to seven hours for attending a Board of Real Estate Appraisers meeting consistent with the AQB criteria.

The proposed rules do not exceed federal standards or law.

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

Yes. Section 205 of the Code, MCL 339.205, states that the department shall promulgate rules which are necessary and appropriate to enable the department to fulfill its role under the Occupational Code. Section 308 of the Code, MCL 339.308, states that the Board shall promulgate rules as required in the article in which it is created as are necessary and appropriate to fulfill its role. Section 2605 of the Code, MCL 339.2605, requires a licensee who performs an appraisal to utilize the USPAP in effect at the time of the appraisal, and requires the Department to utilize the AQB criteria regarding education, examination, and experience for licensure. Both the USPAP and AQB Criteria are subject to amendments adopted by the Department.

Although there is no federal mandate requiring rules, federal law requires that certain appraisals be handled by a state certified appraiser, and appraisals for federally related transactions not requiring the services of a state certified appraiser be prepared by either a state certified appraiser or a state licensed appraiser.

The following provisions allow for rule making: MCL 339.202, MCL 339.205, MCL 339.210, MCL 339.308, MCL 339.2601, MCL 339.2605, MCL 339.308, MCL 339.2605, MCL 330.3101, MCL 445.2001, MCL 445.2011, MCL 445.2025, MCL 445.2030.

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.

The rules do not exceed a federal standard.

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 are consistent with the standards required by the Code and AQB Criteria. All states require appraisers to be licensed or certified to provide appraisals to federally regulated lenders.

All states use AQB minimum requirements. A search of the Great Lakes Region revealed that Illinois provides an USPAP Standard 3 exemption for board members, auditors, and examiners employed or retained by the Illinois Department of Financial and Professional Regulation while performing an investigation, audit, or examination. Indiana, Wisconsin, Ohio, and Pennsylvania do not provide exemptions in this situation.

Illinois provides for supervisory requirements and allows for a non-resident permit for 18 months. Indiana provides for a temporary permit for 1 year to a non-resident appraiser to complete an assignment and allows CE credit for attendance at a board meeting. Wisconsin limits a non-resident appraiser temporary permit to the specific assignment in the application and requests an estimated completion date. Pennsylvania allows temporary practice for 12 months on no more than three appraiser assignments and follows the AQB CE requirements.

An expanded search revealed that Maine and Utah provide a USPAP Standard 3 exemption for board members and investigators when acting in an official capacity, including reviewing complaints and testifying at hearings.

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

The proposed rules do not exceed standards in other states.

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

The proposed rules are consistent with the Occupational Code; the Appraisal Foundation's Appraisal Standards Board (ASB) USPAP, authorized by the United States Congress; the Appraisal Subcommittee's (ASC) review results; and the AQB Criteria. The Department is not aware of any laws, rules, or legal requirements that 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.

The proposed rules have been coordinated with the Occupational Code; the Appraisal Foundation's Appraisal Standards Board (ASB) USPAP, authorized by the United States Congress; the Appraisal Subcommittee's (ASC) review results; and the AQB Criteria.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

There is no applicable federally mandated standard for states to establish rules. Consequently, MCL 24.232(8) is not applicable.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the 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 and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(9) does not apply.

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

The desired outcome of the proposed rules is to: update the exemptions from USPAP by exempting board members and investigators from Standard 4 reporting and thereby reduce the complexity and length of time for board member and investigator reviews; reduce the use of a temporary permit by nonresident appraisers in circumstances where a full license is appropriate; provide for a program to allow a supervisory appraiser to supervise more than 3 trainee appraisers for greater training opportunities; and allow licensees to submit attendance at a Board meeting for CE credit.

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

The goal is to change behavior as follows: reduce the reporting process and thereby reducing the complexity and length of time for board member and investigator reviews; reduce the use of a temporary permit by nonresident appraisers where a full license is appropriate; provide for a program to allow a supervisory appraiser to supervise more than 3 trainee appraisers to allow for greater training opportunities; and allow licensees to submit attendance at a Board meeting for CE credit.

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

The differences include: reducing the reporting process and thereby reducing the complexity and length of time for board member and investigator reviews; reducing the use of a temporary permit by nonresidents; providing for a program to allow a supervisory appraiser to supervise more than 3 trainee appraisers to allow for greater training opportunities; and allowing licensees to submit attendance at a Board meeting for CE credit.

C. What is the desired outcome?

The desired outcome of the proposed rules is to: update the exemptions from the USPAP by exempting board members and investigators from USPAP Standard 4, thereby reducing the complexity and length of time for board member and investigator reviews; reduce the reuse of a temporary permit by nonresidents; allow a supervisory appraiser to supervise more than 3 trainees for greater training opportunities; and allow licensees to submit attendance at a Board meeting for CE credit.

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.

The harm resulting from the behavior that the proposed rules are designed to alter is: the increased time and complexity involved in meeting USPAP Standard 4 in reporting that is not necessary with board member and investigator reviews; the use of a temporary permit by nonresidents for replacement of a full license; and limited training opportunities for appraiser trainees.

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

The desired outcome of the proposed rules is to: update the exemptions from the USPAP by exempting board members and investigators from USPAP Standard 4, thereby reducing the complexity and length of time for board member and investigator reviews; reduce the reuse of a temporary permit by nonresidents; allow a supervisory appraiser to supervise more than 3 trainees for greater training opportunities; and allow licensees to submit attendance at a Board meeting for CE credit.

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.

The proposed rules provide a regulatory mechanism for the practice of appraisers. The proposed rules will protect the health and safety of Michigan's citizens by: exempting board members and investigators from USPAP Standard 4 and thereby reducing the complexity and length of time for board member and investigator reviews; reducing the use of a temporary permit by nonresidents; providing for a program to allow a supervisory appraiser to supervise more than 3 trainee appraisers to allow for greater training opportunities; and allowing licensees to submit attendance at a Board meeting for CE credit.

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

There are no rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

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 may be a fiscal impact on the department by excepting Board members and investigators from USPAP Standard 4. However, the decreased fiscal impact on the agency cannot be estimated at this time.

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

No agency appropriation has been made nor has a funding source been provided for expenditures associated with implementing these 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.

The additional requirements for a supervisor of more than 3 trainees will ensure that trainees are adequately supervised. Requiring a non-resident to apply for a full license instead of routinely requesting an extension of a temporary license could result in the application fees associated with full licensure. This cost is necessary in order to ensure that the licensure process is not being avoided in order for non-residents to accept new appraisals without a full Michigan license.

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

The rules are required by statute to provide a mechanism for licensure, supervision, temporary permits, and CE. The rules are no more restrictive than is allowed by statute. Despite the cost-related burden of licensure and CE, the rules and regulations are necessary in order to provide a framework of standards for the profession.

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 are no anticipated increases or decreases in revenues to state or local governmental units as a result of the proposed rules.

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

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, county, township, village, or school districts.

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.

Governmental units must take no action to be in compliance with the rules.

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.

No appropriations have been made to any governmental units as a result of these rules. No additional expenditures are anticipated or intended with the proposed rules.

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

The proposed rules are not expected to impact rural areas. The proposed rules apply to an individual licensee under the Code, regardless of his or her location.

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

No disparate impact of public or private interests is anticipated on rural areas because of the proposed rules.

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

The proposed rules do not have an environmental impact.

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

The proposed rules impose requirements on individual appraisers rather than small businesses. Even if an appraiser's workplace qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession.

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 rules regulate appraisers. Further, the Act requires an appraiser to be licensed and he or she may work in a small business.

While an appraiser may work independently or as part of a small business, the law does not allow the rules to exempt these individuals from the requirements of the rules. However, the impact on an appraiser who works as part of a small business is minimized in the proposed rules, as the rules are written broadly. As a result, an appraiser, whether he or she works in small business or not, should not be impacted any more or any less by the changes.

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

There are approximately 518 state licensed real estate appraisers, 1,085 certified general real estate appraisers, 1,082 certified residential real estate appraisers, 382 limited licensed real estate appraisers, and 66 temporary practice permits in Michigan.

An appraiser may work in a small business, but no matter what type of business environment he or she works in, he or she will have to comply with the proposed rules. The rules do not impact small businesses differently because the impact is to the individual appraiser only.

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.

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all appraisers. The rules were drafted to be the least burdensome on all affected appraisers.

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.

The agency did not consolidate or simplify compliance and reporting requirements with the proposed rules.

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

The agency did not establish performance standards to replace design or operation standards required by these rules.

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

The proposed rules do not impact small business; rather, they impact an individual appraiser. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

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

There is no report preparation cost to small businesses.

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.

There will be no increased costs of compliance for a small business concerning the costs of equipment, supplies, labor, or administrative costs.

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.

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

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

There are no expected costs to a small business that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

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 impose requirements on appraisers rather than a small business. Even if an appraiser qualifies as a small business, the department could not exempt his or her business because it would create disparity in the regulation of the profession. Therefore, there is no cost to the agency for administering or enforcing the rules because exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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

The proposed rules impose requirements on appraisers rather than a small business. Even if an appraiser qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession. Therefore, exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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

The department worked with the Board of Real Estate Appraisers as well as stakeholders who attended public meetings and submitted written comments in the development of the proposed rules. The Board is composed of members of the profession and public members who work in small and large businesses in Michigan.

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

The department worked with the Board of Real Estate Appraisers as well as stakeholders who attended public meetings and submitted written comments in the development of the proposed rules. No other small businesses were involved in the development of the rules.

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

There are no estimated compliance costs with these rule amendments on businesses or groups.

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

No businesses or groups will be directly affected or benefited by the proposed rules. No additional costs will be imposed on any businesses or groups.

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.

No additional costs will be imposed on any businesses or groups.

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.

The proposed rules do not have any additional statewide compliance costs on individuals.

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

The number of licensed appraisers in the state includes approximately 518 state licensed real estate appraisers, 1,085 certified general real estate appraisers, 1,082 certified residential real estate appraisers, 382 limited licensed real estate appraisers, and 66 temporary practice permits.

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

There may be a reduction in approval of extensions of temporary permits for non-resident appraisers. A supervisory appraiser may supervise more trainee appraisers at one time. Appraiser licensees may submit attendance at a Board meeting for CE credit.

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

There are no cost reductions to businesses, individuals, or groups of individuals, or governmental units as a result of the proposed 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 direct benefits of the proposed rules include: updating the exemptions from USPAP by exempting board members and investigators from USPAP Standard 4 and thereby reducing the complexity and length of time for board member and investigator reviews; reducing the use of a temporary permit by nonresidents; providing a program to allow a supervisory appraiser to supervise more than 3 trainee appraisers and allow for greater training opportunities; and allowing licensees to submit attendance at a Board meeting for CE credit.

The indirect benefits of the proposed rules include more timely board member and investigation reviews, and faster training for appraisers.

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

The rules are not expected to have an impact on business growth or job creation.

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 is not expected to be a disproportionate affect due to industrial sector, segment of the public, business size, or geographic location.

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 Appraisal Foundation:

<https://appraisalfoundation.sharefile.com/share?#/view/se551ba7031a469ca>

The Appraisal Foundation, Appraisal Qualifications Board:

<http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/Appraisers/40AQBQual.pdf>

The Appraisal Subcommittee:

<https://www.asc.gov/Documents/PolicyStatements/ASC%20Policy%20Statements%2006.01.13.pdf>

Illinois Administrative Code:

<http://www.ilga.gov/commission/jcar/admincode/068/068014550E02400R.html>

Indiana Administrative Code:

https://secure.in.gov/pla/files/REAB.2012_EDITION.pdf

<https://www.in.gov/pla/appraiser.htm>

<https://www.in.gov/pla/files/Updated%20Real%20Estate%20Appraiser%20Continuing%20Education%20Requirements.pdf>

Maine Revised Statutes:

<http://legislature.maine.gov/statutes/32/title32sec14011.html>

Ohio:

<http://codes.ohio.gov/oac/Search/appraiser>

<https://com.ohio.gov/REAL/>

Pennsylvania:

<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/049/chapter36/chap36toc.html&d=>

Uniform Standards of Professional Appraisal Practice 2016-2017 Edition:

<http://uspap.org/>

Utah Standards of Professional Conduct:

http://www.realestate.utah.gov/appraisal/R162-2g_502a.pdf

Wisconsin Revised Statutes:

<https://docs.legis.wisconsin.gov/statutes/statutes/458/24>

Wisconsin Rules of Professional conduct:

https://docs.legis.wisconsin.gov/code/admin_code/sps/professional_services/080/86.pdf

Wisconsin Board

<https://dsps.wi.gov/Pages/BoardsCouncils/REA/Default.aspx>

A. 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 rules.

There were no estimates or assumptions made.

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

The rules are required by statute; there is no reasonable alternative to the proposed rules.

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

There is no reasonable alternative to the proposed rules.

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.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. States regulate appraisers by statute, regulation, or both. Private market-based systems are not used for licensing and regulation. The licensing and regulation of appraisers are state functions, so a regulatory program independent of state intervention cannot be established. There are professional associations that establish criteria for membership as an appraiser, but these professional organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements, but does not join one of the professional organizations, would be able to practice and there would be no way to ensure their competency or hold them accountable.

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.

Since the rules are specifically required by statute, there are no alternatives to the proposed rules that the agency could consider. They are necessary for the administration and enforcement of the licensure process.

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

Instructions regarding licensure, renewal, trainees, supervisors, and temporary permits will be included on the department's website as well as in the applications.