

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 Fire Services

Name of person filling out RIS:

Andrea Keown

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Rule Set Information:

ARD assigned rule set number:

2019-21 LR

Title of proposed rule set:

Fire Fighters Training Council

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 currently no federal administrative rules for firefighter training.

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

When Public Act 291 was modified through the legislative process, in the legislation it requires certifications for classifications that must minimally meet the current NFPA standards for that classification. The NFPA is a consensus standard that is clearly identified in Public Act 291 of 1966 as Amended and can be found in Section 29.362 Definitions.

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 federally mandated firefighter administrative rules or standards that apply to the certifications in PA 291.

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

Certification

All surrounding states (Ohio, Illinois, Indiana, Wisconsin) require firefighters to minimally meet:

NFPA 1001: Standard for Fire Fighter Professional Qualifications

NFPA 1021: Standard for Fire Officer Qualifications

NFPA 1041: Standard for Fire Service Instructor Professional Qualifications

NFPA 1403 : Live Fire Training

Live Fire Training

Illinois recommends the following for NFPA 1403: Standard on Live Fire Training Evolutions for all live fire training, however it is not a requirement.

Indiana does not appear to have a requirement for live fire training.

Ohio has a Live Fire Certification Program (administrative code 4764-21-03). They also require the following of NFPA 1403: Standard on Live Fire Training Evolutions to be followed during live fire training.

Wisconsin requires NFPA 1403: Standard on Live Fire Training Evolutions be followed.

Once the new rules are adopted, Michigan will also require the following of NFPA 1403: Standard on Live Fire Training Evolutions to be followed during live fire training.

Reciprocity

Ohio, Wisconsin, Indiana grant some form of reciprocity, but the candidate is required to take an exam for each certification they are requesting reciprocity.

In Illinois, before a course is granted equivalency, the individual must pay a \$100.00 review fee. Then, if granted, the individual will be allowed to challenge the State written and practical skills examinations one time.

When the new rules go into effect, Michigan will be the easiest state to gain reciprocity without an exam requirement for individuals who are certified in another state, military, or Pro Board®, IFSAC, and National Fire Academy in identified classifications.

Continuing Education

Ohio - Requires firefighters to acquire 54 hours of continuing education within a 3-year period if they do not have an EMS license. For firefighters who have an EMS license, the fire continuing education requirement is 36 hours within a 3-year period. For fire officers the requirement is 6 hours of officer training within a 3-year period.

Note: If a firefighter does not get the 54 hours in the 3-year period, their certification expires, and they must complete an Application for Renewal.

Illinois - Company officer certification expires 4 years after issuance date unless they meet the continuing education requirement of 100 points.

Indiana - For fire instructor only, the continuing education requirement is 40 hours within a 2-year period in specific identified topics. If the fire instructor certification lapses, the fire instructor must reapply and pay a \$50.00 fee.

Wisconsin - Does not have continuing education for their firefighters.

Michigan - If these rules are adopted, a Michigan fire service member will need 36 hours within a 3-year period. A fire instructor/fire officer will need an additional 12 hours within the same 3-year period.

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

Michigan is comparable to other states or has fewer restrictions than Illinois, Indiana, Ohio, and Wisconsin for certification, continuing education, reciprocity, and live fire training.

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

There are no laws, rules, and other 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.

There is minimal duplication since Public Act 291 makes reference to MIOSHA GENERAL INDUSTRY SAFETY AND HEALTH STANDARD PART 74. FIRE FIGHTING.

R 408.17401. Scope. Rule 7401 This part prescribes rules for training for the construction, care, and use of equipment, and for the safeguards to be furnished and maintained as it relates to municipal fire service personnel and equipment. The occupation can be full-time or part-time; for pay or volunteer status.

Public Act 291 references in 29.369 Sec 9. (1) states that the standards established by the state fire marshal, with the approval of a majority of the council, shall prepare and publish rules that establish minimum standards for certification as a fire service member. The standards established under this section must comply with the Michigan Occupational Safety and Health Administration for initial training and continued training to the member commensurate with and specific to the duties that a member is expected to perform. Further before the member is permitted to perform emergency operations was outlined in Public Act 291 29.369, Sec 9. (1)., further the training described in this section and section 9c must be provided before the member is permitted to perform emergency operations.

MIOSHA Part 74 (fire department provides requirements for an employer and the employee who are members of every fire department in Michigan as outlined in Rule 7411 and Rule 7412

•R 408.17411. Duties of Employer. Rule 7411. (1) An employee shall comply with all of the following requirements: (a) Provide initial and continuing training to an employee commensurate with and specific to the duties and functions that the employee is expected to be performed emergency operations.

•R 408.17412. Duties of Employee. Rule 7412. An employee shall do all of the following: (e) Only perform those duties that he or she is trained to do.

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.

There is not a federally mandated standard that requires these certifications, so this is not applicable.

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.

There is not a federally mandated standard that requires these certifications, so this is not applicable.

Purpose and Objectives of the Rule(s)

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

The latest update of Public Act 291 (PA 291) requires additional certification training and testing that was not previously mandated for promotions or positions. It also demands continuing education that was not previously required. Firefighters will have to update their certifications and participate in continuing education annually to maintain their position or obtain promotion.

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

Firefighters will go from not having to annually certify their certifications or participate in continuing education to, under the new proposed rules, having to certify and participate annually to maintain their certifications.

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

Currently firefighters only have to obtain their Fire Fighter I and Fire Fighter II with no further continuing education in order to maintain their certification and/or to be promoted. In the new proposed rules, if firefighters want to be promoted, they will be required to certify and annually participate and successfully complete continuing education courses that minimally meet the NFPA standard for that certification or position.

Currently not all training provided by the Michigan Fire Fighter Training Council minimally meets the current NFPA standard. The amendment of PA 291 requires that all defined classifications must minimally meet the NFPA standard. Presently the BFS only deliver and proctor certification exams for:

- Fire Fighter I with HazMat Ops
- Fire Fighter II
- Fire Fighter I & II with HazMat Ops
- Fire Instructor I
- Fire Instructor II

To ensure that all classifications minimally meet the amended PA 291, once the new rules are adopted, the BFS will proctor and deliver certification exams for:

- Fire Fighter I with HazMat Ops
- Fire Fighter II
- Fire Fighter I & II with HazMat Ops
- Fire Instructor I
- Fire Instructor II
- Fire Instructor III
- Fire Officer I
- Fire Officer II
- Fire Officer III
- Fire Officer IV

C. What is the desired outcome?

Public Act 144 of 2017 (PA 144), which amended Public Act 291 of 1966 (PA 291), added additional NFPA standards. The new, proposed rules are written to give guidance to those amendments in PA 291 and to ensure the new proposed rules are being followed.

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.

There will be added costs and time associated with the additional training and certification requirements of the new proposed rules. In the absence of the rule, added costs and time would likely go toward fixing events caused by lack of continuing education, certification, and training. The additional training and certification will benefit firefighters state wide by making the fire service and the fire scene safer through certification, continuing education and training.

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

Current rules conflict with PA 144, the new proposed rules are to comply with Public Act 144 of 2017 (PA 144), which amended Public Act 291 of 1966 (PA 291), because it added additional NFPA standards.

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 new proposed rules ensure that the members of the fire service are trained and will continue to further their training throughout their career to meet the needs of their community.

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

The following rules are being rescinded because they are being redefined in other added or amended sections of the new proposed rules: R 29.404, R 29.408, R 29.408a, R 29.408b, R 29.408c, R 29.408d, R 29.408e, R 29.408f, R 29.409, and R 29.414.

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).

The cost of implementing the new proposed rules will be fully funded by the BFS fire fighter training budget and Firework Safety Fees. Based on MCL 28.461, which is directly referenced in PA 291, requires that “one hundred percent of the money received from fireworks safety fees under section 8 to be used for the training of firefighters under the direction and approval of the firefighters training council established under the firefighters training council act, 1966 PA 291, MCL 29.361 to 29.377.”

The new proposed rules will add additional costs for:

- Exam administration and development, which will be partially funded by both Firework Safety Fees and the BFS fire fighter training budget.
- The cost of a Certification Specialist position to the BFS, which will be partially funded by both Firework Safety Fees and the BFS fire fighter training budget.
- The Continuing Education (CE) will be tracked by each fire department, the fire departments are currently required by MIOSHA Part 74 (R 408.17411(2)) to maintain the training records for each employee. This cost is the responsibility of each individual fire department and is not a new cost based on the MIOSHA Part 74 Rule. Working with the Department of Technology, Management, and Budget (DTMB) developers to add a box to click attesting that each individual has met the continuing education requirement, which will be funded by the BFS IT budget.

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

Any expenditures associated with the proposed rules will be partially funded by both Firework Safety Fees and the BFS fire fighter training budget.

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.

Since Public Act 144 of 2017 (PA 144) amended Public Act 291 of 1966 (PA 291) because it adds additional NFPA standards, the new proposed rules ensure that members of the fire service are trained and will continue to further their training and education throughout their career. The goal of initial and continuing training and education is identified in MIOSHA Part 74, R 408.17411 that states; “ (1) An employer shall comply with all of the following requirements: (a) Provide initial and continuing training to an employee commensurate with and specific to the duties and functions that the employee is expected to perform. The training shall be provided before the employee is permitted to perform emergency operations.” Due to R 408.17411 of MIOSHA Part 74, departments are already responsible for maintaining records for their employees for initial and continual education, therefore there is no additional fiscal or administrative burden based on the new proposed rules.

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

There will be no additional burden, as per MIOSHA Part 74, R 408.17411, the individual fire departments will have to track and maintain their own initial and continuing education records.

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.

The updated rules will not increase or decrease revenue or costs for other state or local governmental units because all costs for training and certification are partially funded by both Firework Safety Fees and the BFS fire fighter training budget.

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

Due to R 408.17411 of MIOSHA Part 74, departments are already responsible for maintaining records for their employees for initial and continual education, therefore there are no additional program, service, duty, or responsibility imposed upon any city, county, town, village, or school district based on the new proposed rules.

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 updated rules will require governmental units to continue to document continuing education for each of their members as well as stay current with their National Fire Incident Reporting System (NFIRS) monthly reporting to receive the Fireworks Safety Fees for funding.

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.

Due to R 408.17411 of MIOSHA Part 74, departments are already responsible for maintaining records for their employees for initial and continual education, therefore there are no additional expenditures to state or local governmental units with the proposed rules.

Rural Impact

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

The new proposed rules will not have any additional impact to rural areas, as rural areas currently must be following R 408.17411 of MIOSHA Part 74, in which departments are responsible for maintaining records for their employees for initial and continual education.

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

Public and/or private interests in rural areas will not be affected by the rules.

Environmental Impact

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

The proposed rules do not have an impact on the environment.

Small Business Impact Statement

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

Small businesses will not be affected by 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.

Small businesses will not be affected by the proposed rules.

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

Small businesses will not 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.

Small businesses will not be affected by 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.

Small businesses will not be affected by the proposed rules.

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

Small businesses will not be affected by the proposed rules.

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

Small businesses will not be affected by the 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.

Small businesses will not be affected by 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.

Small businesses will not be affected by the proposed rules.

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.

Small businesses will not be affected by 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.

Small businesses will not be affected by 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.

Small businesses will not be affected by the proposed rules.

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

Small businesses will not be affected by the proposed rules.

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

Small businesses will not be affected by the proposed rules.

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

Small businesses will not be affected by the proposed rules.

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

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

There will not be statewide compliance costs on businesses or groups with the proposed rules.

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

There are no businesses or groups that will be affected by the new proposed rules.

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.

There are no businesses or groups that will be affected by the new proposed rules.

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.

There will not be any compliance costs for individuals or the public from the proposed new rules because all costs for training and certification are partially funded by both Firework Safety Fees and the BFS fire fighter training budget.

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

2,249 Cadets, 72 Explorers, 7,622 Paid Firefighters, 4,074 Non-Paid Firefighters, and 15,065 Part-Paid Firefighters will be affected by the new proposed rules. These numbers include all ranks within the fire service.

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

Since Public Act 144 of 2017 (PA 144) amended Public Act 291 of 1966 (PA 291) because it adds additional NFPA standards, the new proposed rules will require members of the fire service to minimally meet and test to the current NFPA standard(s) for their position(s) within the fire department. This will ensure that firefighters and fire officers are more knowledgeable and certified to their position, creating a safer and more beneficial work environment.

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

There will be no cost reductions to businesses, individuals, 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 updated rules will directly benefit Michigan firefighters by providing current and continual training to protect the health and safety of not only themselves but also the citizens in the communities they live and serve, which indirectly benefits the people and businesses of those communities.

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

For firefighters with aspirations to further their career in the fire service, the proposed new rules will help with job creation as well as retention because it lays the foundation of how to obtain higher positions. The proposed new rules will make Michigan one of the easiest states to come to and receive reciprocity for fire certifications from another state. The proposed new rules outline the process for reciprocity, allowing military veterans and out of state firefighters the ability to receive Michigan certification for their out of state or military certificates and training. Reciprocity will help to recruit and retain firefighters from other states to quickly fill vacancies.

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.

Not applicable as the updated rules will allow for in-person and online training as well as distribute Fireworks Safety Fees evenly throughout the entire state to cover costs for initial and ongoing training of firefighters.

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 is basing it on the county allocations budgeted by the Bureau of Fire Services with the approval of the Michigan Fire Fighters Training Council using Fireworks Safety Fees as identified in PA 291.

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 Michigan Fire Fighters Training Council, which is an appointed body, has met 43 times since February of 2018 to consider, frame, and compromise to develop a rule set that will meet the needs and limitations of all 83 Michigan counties.

Alternative to Regulation

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

All reasonable alternatives in the rules process were considered by the stakeholder groups, with the rules represented by the nine members of the Michigan Fire Fighters Training Council (Michigan Association of Fire Chiefs, Michigan Professional Fire Fighters Union, Michigan Firemen's Association, Michigan Fire Service Instructors Association, Michigan Fire Inspectors Society, Michigan Municipal League, Michigan Townships Association, and the Bureau of Fire Services).

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

All reasonable alternatives in the rules process were considered by the stakeholder groups, with the rules represented by the nine members of the Michigan Fire Fighters Training Council (Michigan Association of Fire Chiefs, Michigan Professional Fire Fighters Union, Michigan Firemen's Association, Michigan Fire Service Instructors Association, Michigan Fire Inspectors Society, Michigan Municipal League, Michigan Townships Association, and the Bureau of Fire Services).

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 currently uses a private market-based system by using instructors that are certified by the state, who are independent contractors, using funds that are dispersed to each county that serves as the fiduciary to pay the instructors. The Bureau of Fire Services provides oversight of this program.

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 nine members of the Michigan Fire Fighters Training Council felt that it is best for the Bureau of Fire Services to conduct the certification process and exams.

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.

The updated administrative rules will replace the existing rules that are posted on the Michigan Fire Fighters Training Council website for public viewing. Also, the updated administrative rules will be emailed to stakeholders using GovDelivery announcements.