

Michigan Department of Licensing and Regulatory Affairs  
**Office of Regulatory Reinvention**  
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**REGULATORY IMPACT STATEMENT  
and  
COST-BENEFIT ANALYSIS**

**PART 1: INTRODUCTION**

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

**ORR-assigned rule set number:**

2013-113 LR

**ORR rule set title:**

Fireworks Safety General Rules

**Department:**

Licensing and Regulatory Affairs

**Agency or Bureau/Division**

Bureau of Fire Services

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

Randy Lankford, Region 3 Supervisor – 269-544-4451

**Reviewed by Department Regulatory Affairs Officer:**

Liz Arasim  
Department of Licensing and Regulatory Affairs

## **PART 2: APPLICABLE SECTIONS OF THE APA**

### **MCL 24.207a “Small business” defined.**

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

### **MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).**

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

**MCL 24.245 (3)** “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

### PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

#### Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules are promulgated under the authority of the Michigan Fireworks Safety Act (2011 PA 256), MCL 28.451 et. seq., which authorizes the Department of Licensing and Regulatory Affairs to promulgate rules to administer the Act. The Act states that the promulgated rules shall conform to the National Fire Protection Association (NFPA) 1124 Code for Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles that is not in conflict with the Act. There are no parallel federal rules that regulate the sale of consumer fireworks.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

There are four similarly situated states for geographic location, topography, natural resources, commonalities and economic similarities. The four states, listed in no particular order, are Ohio, Wisconsin, Kentucky, and Indiana. These states are geographically close to Michigan, have legalized all 1.4g consumer fireworks for sale to public, and are economically are similar. The Michigan application refund policy is unique. Other states comparable to Michigan regarding aspects of geographic location and legalization of fireworks can't be compared to the application process of Michigan as the comparable states don't have application processes that are similar. So any impact statement regarding refund policy can't be made.

**Kentucky** - Kentucky regulates fireworks sales at the state level and also allows local units of government to regulate the sale of fireworks as long as the local regulations are not less restrictive than the state law. [KRS 227.750(4)] Kentucky applies both the IBC with amendments and NFPA 1124. [KRS 227.715(7)] In general, Kentucky regulations, standards and rules are identical to Michigan's proposed rules with the exception of local control of sales.

**Ohio** - Ohio regulates the sale of fireworks at the state level and allows some local regulations. Ohio uses NFPA 1124 and Ohio Building Code (IBC based) to promulgate rules for consumer fireworks sales. [Ohio Revised Code (ORC) 3743.16(B) and 3743.18(B)] Ohio has promulgated rules pursuant to ORC 3743.18 in the Ohio Fire Code Rule 33. Ohio Fire Code Rule 33 is very similar to rules proposed by Michigan as it is also NFPA based. Local units of government enforce the Ohio Building Code and their local building codes. An exception to NFPA 1124 in Ohio regulations is that all structures selling fireworks must be stand-alone buildings. [ORC 3743.17(G)(1)(d)] Another exception to the NFPA is that Ohio businesses may not sell from containers. [ORC 3743.19(J)] In comparison, Michigan does not have either of these requirements. Ohio rules require that extensive records be kept on premises including inventory, sales and other retail records. [ORC 3743.61] Ohio law allows for transfers of licenses for location but only to the same entity or name. [ORC 3743.17(F)(1)] Ohio law does not provide for entity-to-entity transfers. Ohio businesses may only sell to retail purchasers that sign a form. This form states that the retail purchaser must take the fireworks outside of Ohio within 48 hours. [ORC 3743.44(C)] Ohio currently has a moratorium on licenses to sell fireworks. [ORC 3743.75] In general, Ohio law is much more restrictive to business than the proposed Michigan rules.

**Indiana** - Indiana regulates the sale of fireworks at the state level with authority to delegate inspections to the local units of government. The enforcement of the law is granted to the State Fire Marshal's Office. [IC 22-11-14-9] Indiana applies the Indiana Building Code which is IBC based. NFPA regulations are used by the State Fire Marshal's Office, but are not specifically adopted by the Indiana Fireworks law. Indiana has several differing regulations regarding tent sales. Tents may not be larger than 1,500 square feet in area, must be located 100 feet from a building, may not contain fireworks having a gross weight above 3,000 pounds, and may conduct sales for only for 45 days. All vehicles must be parked 20 feet from a tent. [IC22-11-14-4.5] All of these tent rules are more restrictive than Michigan's proposed rules. Indiana allows entity to entity transfers. Indiana does not allow location transfers. [IC22-11-14-11] With the exception of tent sales, Indiana's rules are similar to Michigan's proposed rules.

**Wisconsin** - Wisconsin regulates the sale of fireworks at the state and local level with most regulation occurring at the local level. Wisconsin uses the Wisconsin Building Code which is IBC based and has adopted NFPA 1. NFPA 1 contains NFPA 1124 within in it. So in essence, Wisconsin uses both NFPA 1124 and IBC to regulate fireworks businesses. In Wisconsin, fireworks retailers may only sell to non-residents or to residents with a locally approved permit to use consumer fireworks. [167.10(2)] The resident use permit must be filed with local fire department. [167.10(3)(g)] Local units of government may enact a local fireworks ordinance. [167.10(5)] Wisconsin requires a fireworks business to notify a local fire department of its location and its building plans. Michigan's proposed rules also have this requirement. Wisconsin is more restrictive than Michigan as rules and regulations vary from community to community.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The existing rules have been coordinated to reference the Michigan Building Code (R 408.30401 – R 408.30547) and the Michigan Electrical Code (R 408.30801 – R 408.30880) to comply with existing state regulations. These regulations would apply in place of NFPA 5000, Building Construction and Safety Code and NFPA 70, National Electrical Code as referenced in NFPA 1124. The proposed rule changes will not affect these standards.

#### **Purpose and Objectives of the Rule(s):**

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The amended rule set is being proposed to address changes in the Act as the result of the enactment of Public Act 65 of 2013, which took effect June 19, 2013. These changes include the following:

##### **R 29.2905 Collection of fees.**

The rule is being revised to permit the submittal of fire safety fees monthly rather than quarterly.

##### **R 29. 2927 Delegation requirements.**

##### **R 29.2928 Delegation application.**

##### **R 29.2929 Delegation payment.**

These rules are being added to specify requirements for delegation of fireworks inspections to local inspection authorities.

In addition, the following rule is being amended to correct an inconsistency between the Act and the existing Rules:

**R 29.2920 Appeal of violation citation or civil infraction penalty or fine.**

The Act states that a person to whom a citation is issued shall accept or reject the terms of the citation within 15 days of the date of the citation. The existing rule states that any party wishing to appeal the violation citation, any penalty or fine assessed for such violation, or both shall file within 28 calendar days of issuance of the violation citation an appeal with the state fire marshal. The rule is being revised to change the 28 calendar days permitted for an appeal to 15 calendar days to be consistent with the Act and to eliminate confusion between the two different dates.

In addition, the following rules are being amended to reduce regulations on the applicant and make the application process more streamlined.

**R 29.2904 Affidavit of compliance.**

The rule is being rescinded to delete the requirement that applicants provide a notarized affidavit of no felony conviction.

**R 29.2906 Transfer of certificate.**

The rule is being revised to permit the transfer of a consumer fireworks certificate for a temporary facility to a new location.

**R 29.2907 Refunds.**

The rule is being revised to permit refunds of consumer fireworks application fees only under specific conditions.

Changes to the fireworks certificate application refund rule are proposed to limit conditions under which a refund of the application fee will be permitted. Over the past 2 years, the Bureau has identified a significant number of applications processed where the applicant had not conducted due diligence in securing an acceptable site to conduct his or her business. The Bureau expended significant time and manpower processing applications, reviewing plans, distributing files to the field for inspections, time spent attempting to contact vendors and locate inspection sites only to discover that the business never opened due to the business being unable to meet local regulatory requirements or to come to terms with a landlord to secure a lease to operate. These businesses then requested a refund of their application fee because they didn't open for sales. The proposed elimination of most refund requests for reasons not under the control of the Bureau is necessary to limit this activity and place more responsibility on the business to secure a location prior to submitting an application for a fireworks certificate. The proposed amendment will also provide some financial relief of cost deficit as noted in item (8) below.

In fiscal year 2013, the bureau issued 80 refunds for a total of \$40,520.00.

The proposed change to limit refunds is being offset by proposed changes to the transfer rules which will permit transfer of a certificate to a new location prior to June 1<sup>st</sup> of each year. Transfer to an alternate location was not permitted in the existing rules.

**R 29.2913 Retail sales of consumer fireworks.**

The rule is being revised to permit renewal applications for existing permanent facilities without requiring new plans to be submitted unless changes have been made to the site, facility structure or floor plan from the previous year. The revised rule will require temporary facilities to submit only a site plan, reducing the plan submittal requirements for these facilities. In addition, the rule will be revised to clarify the information that must be included on site plans for temporary and permanent facilities as well as floor plans for permanent facilities.

The bureau has had a difficult time approving submitted building and site plans in the past due to insufficient information provided on the plans. The proposed rule modifications are intended to clarify

what information is required to complete the plan review. Inclusion of the required information will avoid delays in processing the review and provide approvals in a shorter time frame.

**R 29.2914 Verification of compliance.**

The rule is being revised to remove the requirement to provide a notarized affidavit that attests to compliance with NFPA 1124. In addition, the rule will be revised to clarify that consumer fireworks cannot be sold at a retail location until the required plans have been received and approved by the Bureau of Fire Services.

**R 29.2920 Appeal of violation citation or civil infraction penalty or fine.**

The rule currently requires the State Fire Marshal to issue a review decision within 28 calendar days of issuance of the violation citation. The rule is being revised to state, instead, that this will occur within 15 calendar days of receipt of an appeal of a violation citation.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

An amended rule set is being proposed to implement changes to the Michigan Fireworks Safety Act as a result of the enactment of Public Act 65 of 2013 which took effect on June 19, 2013. These changes include the following:

**R 29.2905 Collection of fees.**

The rule is being revised to permit the submittal of fire safety fees monthly rather than quarterly.

The following are being added:

**R 29. 2927 Delegation requirements.**

**R 29.2928 Delegation application.**

**R 29.2929 Delegation payment.**

These rules are being added to implement changes to the Michigan Fireworks Safety Act as a result of the enactment of Public Act 65 of 2013 which took effect on June 19, 2013. These rules are needed to create guidelines for the implementation of the act and to provide consistency in the administration of the delegation program. Without these additional rules the bureau would have little control and oversight of the delegation of inspections to local authorities.

In addition, the Bureau of Fire Services has received input from industry representatives requesting changes to the existing rules that will facilitate an easier application process. Additional revisions are proposed to update Bureau procedures and processes to streamline the processing of applications in an efficient, timely manner consistent with the requirements of the Act and to update mailing addresses that have changed since the last rule adoption.

**R 29.2906 Transfer of certificate.**

The rule is being revised to permit the transfer of a consumer fireworks certificate for a temporary facility to a new location. Revisions to this rule will offset the impact of revisions to R 29.2907 which will limit refunds to only specific circumstances. Revisions to R29.2906 will permit businesses to modify their business plan if they can't meet the requirements of local jurisdictions and apply to transfer a certificate to a new location by June 1<sup>st</sup>. These revisions will result in fewer refunds being issued while still permitting the business to sell fireworks. In the existing rules, transfer to a new location was not permitted.

**R 29.2907 Refunds.**

The rule is being revised to permit refunds of consumer fireworks application fees only under specific

conditions.

Changes to the fireworks certificate application refund rule are proposed to limit conditions under which a refund of the application fee will be permitted. Over the past 2 years, the Bureau has identified a significant number of applications processed where the applicant had not conducted due diligence in securing an acceptable site to conduct their business. The Bureau expended significant time and manpower processing applications, reviewing plans, distributing files to the field for inspections, time spent attempting to contact vendors and locate inspection sites only to discover that the business never opened due to the business being unable to meet local regulatory requirements or to come to terms with a landlord to secure a lease to operate. These businesses then requested a refund of their application fee because they didn't open for sales. The proposed elimination of most refund requests for reasons not under the control of the Bureau is necessary to limit this activity and placing more responsibility on the business to secure a location prior to submitting an application for a fireworks certificate. The proposed amendment will also provide some financial relief of cost deficit as noted in item (8) below.

In fiscal year 2013, the bureau issued 80 refunds for a total of \$40,520.00.

The proposed revision to limit refunds is being offset by proposed revisions to R 29.2907 which will permit transfer of a certificate to a new location prior to June 1<sup>st</sup> of each year. Transfer to an alternate location was not permitted in the existing rules.

**R 29.2913 Retail sales of consumer fireworks.**

The rule is being revised to permit renewal applications for existing permanent facilities without requiring new plans to be submitted unless changes have been made to the site, facility structure or floor plan from the previous year. The revised rule will require temporary facilities to submit only a site plan, reducing the plan submittal requirements for these facilities. In addition, the rule will be revised to clarify the information that must be included on site plans for temporary and permanent facilities as well as floor plans for permanent facilities.

The bureau has had a difficult time approving submitted building and site plans in the past due to insufficient information provided on the plans. The proposed rule revisions are intended to clarify what information is required to complete the plan review. Inclusion of the required information will avoid delays in processing the review and provide approvals in a shorter time frame.

**R 29.2914 Verification of compliance.**

The rule is being revised to remove the requirement to provide a notarized affidavit that attests to compliance with NFPA 1124. In addition, the rule will be revised to clarify that consumer fireworks cannot be sold at a retail location until the required plans have been received and approved by the Bureau of Fire Services.

Facilities in the past have submitted an affidavit of compliance and submitted plans to the bureau but opened for business and began selling fireworks prior to the plans being approved. When the plans were reviewed and found that the facility was not in compliance with the code the facility was fined for being open and selling fireworks to the public in an unsafe facility. This change in the rule will prevent a facility from selling consumer fireworks prior to having plans approved which will protect citizens and prevent fines to a facility that should not be open for sales to the consumer.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The Act mandates the use of NFPA 1124 as the basis for rules. NFPA 1124 is a national, consensus-based standard that is utilized for establishing fire codes relating to fireworks. The existing rules adopt the applicable provisions of NFPA 1124 relating to the retail sales of consumer fireworks. No changes of

the national, consensus based standard are proposed in the rules. Additional portions of the rules provide the framework for the enforcement and regulatory actions of the Bureau of Fire Services as mandated by the Act.

The following rule revisions are proposed to protect the health, safety, and welfare of Michigan citizens:

**R 29.2914 Verification of compliance.**

The rule will be revised to clarify that consumer fireworks cannot be sold at a retail location until the required plans have been received and approved by the Bureau of Fire Services.

Facilities in the past have submitted an affidavit of compliance and submitted plans to the bureau but opened for business and began selling fireworks prior to the plans being approved. When the plans were reviewed and found that the facility was not in compliance with the code the facility was fined for being open and selling fireworks to the public in an unsafe facility. This change in the rule will prevent a facility from selling consumer fireworks prior to having plans approved which will protect citizens and prevent fines to a facility that should not be open for sales to the consumer.

The following rule revisions will reduce the burden on applicants by improving the application process and reducing the number of documents required in the application process:

**R 29.2904 Affidavit of compliance.**

The rule is being rescinded to delete the requirement that applicants provide a notarized affidavit of no felony conviction.

**R 29.2913 Retail sales of consumer fireworks.**

The rule is being revised to permit renewal applications for existing permanent facilities without requiring new plans to be submitted unless changes have been made to the site, facility structure or floor plan from the previous year. The revised rule will require temporary facilities to submit only a site plan, reducing the plan submittal requirements for these facilities. In addition, the rule will be revised to clarify the information that must be included on site plans for temporary and permanent facilities as well as floor plans for permanent facilities. Inclusion of the information in the submitted plans will improve the review process and expedite final approval of the facility to begin selling consumer fireworks.

**R 29.2914 Verification of compliance.**

The rule is being revised to remove the requirement to provide a notarized affidavit that attests to compliance with NFPA 1124.

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

The proposed rule set will rescind R 29.2904 which requires submittal of an affidavit of compliance because an affidavit will no longer be required due to changes being made to the application.

**Fiscal Impact on the Agency:**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

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

For Fiscal Year 2013, the Bureau processed 539 applications for temporary facilities and 148 applications for permanent facilities. Based upon the application fees provided in the Act, the revenue

collected was \$555,498. For Fiscal Year 2013, the Bureau expended \$666,889 to process applications, review plans, inspect facilities, respond to complaints, and any other activities associated with the fireworks program. In total for fiscal year 2013, the program operated at a loss as expenses exceeded revenues by \$111,391.

The following changes to the rules will reduce costs to the bureau associated with handling and processing documents, and administration costs:

**R 29.2904 Affidavit of compliance.**

The rule is being rescinded to delete the requirement that applicants provide a notarized affidavit of no felony conviction.

**R 29.2907 Refunds.**

The rule is being revised to permit refunds of consumer fireworks application fees only under specific conditions. In fiscal year 2013, the bureau issued 80 refunds for a total of \$40,520.00. It is estimated that in fiscal year 2014 and annually thereafter the Bureau of Fire Services will save approximately this amount as refunds will be limited to only duplicate payments and the death of the applicant.

**R 29.2913 Retail sales of consumer fireworks.**

The rule is being revised to permit renewal applications for existing permanent facilities without requiring new plans to be submitted unless changes have been made to the site, facility structure or floor plan from the previous year. The revised rule will require temporary facilities to submit only a site plan, reducing the plan submittal requirements for these facilities. In addition, the rule will be revised to clarify the information that must be included on site plans for temporary and permanent facilities as well as floor plans for permanent facilities. Inclusion of the information in the submitted plans will improve the review process and expedite final approval of the facility to begin selling consumer fireworks.

**R 29.2914 Verification of compliance.**

The rule is being revised to remove the requirement to provide a notarized affidavit that attests to compliance with NFPA 1124.

As most revisions noted above involve administrative costs associated with processing and verifying documents it is not possible to estimate the actual cost savings. Bureau efficiency will be improved by the proposed changes permitting man hours saved to be utilized more efficiently to administer the fireworks program, ultimately decreasing the overall time spent processing applications and reviews.

The following changes to the rules may increase costs to the bureau associated with handling and processing documents, and administration costs:

**R 29.2905 Collection of fees.**

The rule is being revised to permit the submittal of fire safety fees monthly rather than quarterly as required by enactment of public Act 65 of 2013, which took effect June 19, 2013. As fees collections will be improved to permit electronic payments, the additional time spent to process payments monthly rather than annually cannot be accurately estimated at this time.

**R 29.2906 Transfer of certificate.**

The rule is being revised to permit the transfer of a consumer fireworks certificate for a temporary facility to a new location. In fiscal year 2013 the bureau issued 80 refunds totaling \$40,520.00. Most of the refunds issued were a result of an applicant that was unable to secure the proposed site due to local regulations. The proposed rule change will now permit a transfer to a new location if applied for by June 1<sup>st</sup>. Processing of transfer requests will increase the administrative costs to the bureau for the man hours required for processing, however any increase in cost to the bureau will be offset by cost savings in R 29.2907 for issuing refunds.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

The Act provides three revenue sources: an annual certificate fee of \$1,000 for permanent consumer fireworks facilities; a \$600 for temporary consumer fireworks facilities that is payable to the Department upon application. The Act also imposes a 6% fireworks safety fee on retail transactions involving both consumer and low impact fireworks that is determined by the gross retail income. The 6% fireworks safety fee was designated to go 100% to firefighter training in the most recent change to the Act in Public Act 65 of 2013, which took effect June 19, 2013 and cannot be used to administer the fireworks program by the Bureau. Additionally, fines are established for violations of both the Act and the promulgated rules.

**Impact on Other State or Local Governmental Units:**

(10) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules add R 29.2927, R 29.2928 and R 29.2929 to establish procedures required by the Act for delegation of inspections to the local unit of government which includes payment to the local unit of government for inspections conducted under the delegation program. Each unit of government granted delegated authority shall be reimbursed 70% of the consumer fireworks safety certificate fee for each facility inspected, which amounts to \$700.00 for a permanent facility and \$420.00 for a temporary facility.

(11) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

Local units of government do not have any responsibilities placed upon them under the proposed rules. Local building departments may become involved with construction of facilities through inspections and enforcement of local building codes. These inspections are separately funded by permit fees set by local ordinances and are outside the scope of these rules or the Act. These rules pose no additional costs or reporting requirements than any other building construction within their jurisdiction. The Act does provide for delegation of authority to local governments to carry out inspections and enforcement of these rules. The delegation process is a voluntary program and not a requirement imposed on the local unit of government. If a local unit of government chooses to participate in the delegation process, the rules do require delegated inspectors to attend an annual training session provided at no cost to the inspection personnel. Delegated units of government are required to submit inspection reports to the bureau on forms provided by the bureau and to follow procedures established by the bureau to insure inspections are conducted timely and consistently throughout the State. Local units of government are reimbursed for their inspection activities as outlined in (10) above.

(12) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No appropriations have been established.

**Rural Impact:**

(13) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

These rules will have no impact on rural areas.

**Environmental Impact:**

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

No environmental impacts are predicted.

**Small Business Impact Statement:**

*[Please refer to the discussion of “small business” on page 2 of this form.]*

(15) Describe whether and how the agency considered exempting small businesses from the proposed rules.

The Act prescribes a statewide regulation that does not have provisions for exemption of small businesses. Please see comments under Item (16) below.

(16) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

The Act requires the Department to promulgate rules consistent with NFPA 1124. This standard does not have provisions for alternative compliance for small businesses. Consequently, there is no legal ability to create alternative regulations. However, the rules include a provision that exempts consumer fireworks sales facilities that have less than 500 pounds gross of product from any additional regulations other than the Act. This exception would be applicable to all businesses regardless of size.

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

Of the 687 consumer fireworks certificates issued for 2013, an undetermined number of them would be small businesses. Since the Act does not allow for reduced regulations for small businesses, the Bureau of Fire Services does not require a small business to be identified or tracked separately from all other applicants.

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

See response to Item (16) above.

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

The Bureau of Fire Services publishes the application process, required forms, and additional compliance information on its website. In addition, the Bureau has developed an on-line payment process for reporting and paying monthly fireworks safety fees. Only basic reading and math skills are required to provide the required information.

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

See response to Item (16) above.

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

The proposed rules retain a requirement to install a fire sprinkler system in any new buildings greater than 6,000 square feet or existing buildings greater than 7,500 square feet. If the business is located in an area that does not have a municipal water system available, providing an on-site water source and fire pump with their associated installation and maintenance costs would be necessary. Facilities smaller than the thresholds listed above would have no adverse impacts based upon location.

(18) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

The Act requires the collection and submission of the 6% Fireworks Safety Fee, as discussed in Item (9) above. The existing rules require that the fees be submitted on a quarterly basis. The amended Act requires fees to be submitted monthly and the proposed rules are amended in R 29.2905 to apply the change for monthly fee submittal. The Bureau of Fire Services provides the reporting form in an electronic format at no charge in addition to an on-line reporting and payment option. Since there are many ways that a business may track the transactions that require the Fireworks Safety Fee, there is no ability to estimate the cost or time associated with compiling the required information. Furthermore, the Bureau does not require businesses to submit this data. However, the time and cost would be similar to the required reporting and submission of state sales tax for those same transactions.

(19) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

Prior to the Act, the sale of consumer fireworks was prohibited in Michigan. If a business elected to enter into consumer fireworks sales as a result of the Act, the costs would be directly associated with the size of the business and whether it is a temporary location (tent or stand) or a permanent building.

The existing rules include a provision that exempts consumer fireworks sales facilities that have less than 500 pounds gross of product from any additional regulations other than the Act. This provision remains unchanged in the proposed rules.

A temporary location would incur costs of securing the product during times when the business is not open.

A permanent building may be required to install a fire sprinkler system at a cost of approximately \$18,000 if the building exceeds 6,000 square feet, heat vents at a cost of approximately \$800 each if the ceiling is less than 10 feet high, and a fire alarm system at a cost of approximately \$2,000 if the building is over 30,000 square feet. These costs can be minimized by proper design of a new building or careful selection of an existing building for use as a new consumer fireworks retail sales facility. The provision for requiring a sprinkler system is included in the existing rules and is unchanged in these proposed rules.

(20) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The Act requires the collection and submission of the 6% Fireworks Safety Fee monthly. A business may elect to utilize an accounting service to compile this information. Since there are many ways that a business may track the transactions that require the Fireworks Safety Fee, there is no ability to estimate the cost or time associated with the use of an accounting service. Furthermore, the Bureau of Fire Services does not require businesses to submit this data. However, the time and cost would be similar to that required for state sales tax for those same transactions. No additional legal or consulting services would be required unless the business owner desired to utilize them for their own reasons.

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

Prior to the Act, the sale of consumer fireworks was prohibited in Michigan. If a business elected to enter into consumer fireworks sales as a result of the Act, the business will have an additional product revenue stream that was previously unavailable. Also, the sale of consumer fireworks has a high profit margin in comparison to other commodities. Furthermore, any small business that decides to sell consumer fireworks in the state will be subject to the same regulations.

(22) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

No exemption for lesser standards is proposed.

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

Consumer fireworks receive a U.S. Department of Transportation Hazardous Material classification as 1.4G explosive materials. These materials have a fuel and oxygen supply within the product and only require a heat source for ignition. Therefore, the hazard to the public, firefighters responding to a fire at the business, and the business owner and employees remains unchanged regardless of the size of the business.

(24) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

The proposed rules were drafted by an ad-hoc committee made up of interested and affected parties relating to consumer fireworks. Two of the representatives on the committee were from small businesses. Those businesses were Route 66 Fireworks and Sparks Fireworks Outlet.

### **Cost-Benefit Analysis of Rules (independent of statutory impact):**

(25) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

As noted in item (4) above, the proposed rule revision in R 29.2907 will eliminate most refunds of fireworks certificate application fees, however the elimination of refunds is being offset by permitting location transfers not previously permitted.

In addition, proposed revisions required by recent changes to the Act require reporting and submittal of fireworks safety fees monthly rather than quarterly as previously required. This change to R 29.2905 is necessary to be in compliance with the Act. Since there are many ways that a business may track the transactions that require the Fireworks Safety Fee, there is no ability to estimate the cost or time associated with compiling the required information. Furthermore, the Bureau of Fire Services does not require businesses to submit this data. However, the time and cost would be similar to the required reporting and submission of state sales tax for those same transactions.

Each business that desires to sell consumer fireworks is required to obtain a consumer fireworks certificate from the Bureau of Fire Services. The costs are \$1000 for a permanent structure and \$600 for a temporary structure.

By complying with the proposed revised rules and paying any associated costs, a business will be permitted to sell consumer fireworks. This increased revenue opportunity was not available prior to the passage of the Act requiring the development and implementation of these rules.

(26) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The proposed rules only impact businesses. No individuals or the public at large will incur compliance costs or be impacted as a result of these rules.

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

No cost reductions are anticipated.

(28) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules establish regulations for the sale of consumer fireworks to the public and the associated retail outlets for those sales. This will allow for a new retail sales market with additional business growth, increased revenue, and job opportunities that were not available prior to the Act. It is expected that a portion of this business growth will utilize existing vacant buildings and lots that are not currently generating business revenue. Additionally, based upon submitted fees for fiscal year 2013, an estimated \$1,769,651 in additional sales tax revenue has been generated that would have potentially gone to other states and an equivalent amount of fire safety fees has been generated which go to firefighter training in Michigan.

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

Prior to the passage of the Act, only low impact fireworks were permitted to be sold and used. Consequently, Michigan residents travelled to bordering states to purchase the fireworks that otherwise were illegal in Michigan. The Act removed this prohibition on the purchase and use of consumer fireworks within Michigan. The proposed rules establish regulations for the sale of consumer fireworks to the public and the associated retail outlets for those sales. This will allow for a new retail sales market with additional business growth, increased revenue, and job opportunities that were not available prior to the Act.

(30) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

No disproportionate effects are predicted.

(31) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The information for Item (2) was provided by Sean Conn of Big Fireworks. Mr. Conn was a member of the ad-hoc committee. His company operates nationwide and has first-hand experience operating businesses in the comparison states.

The financial data comes from Bureau statistics for fiscal year 2013. The number of certificates and the fire safety fee revenues reflect actual amounts through the end of fiscal year 2013.

#### **Alternatives to Regulation:**

(32) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

The Act mandates state regulation of the consumer fireworks sales and requires rules to be promulgated that are consistent with NFPA 1124, 2006 edition. Alternatives could only be considered with legislative change to the statute.

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

The Act mandates state regulation of the consumer fireworks sales. A private market-based system is not feasible.

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

The Act mandates state regulation of the consumer fireworks sales and requires rules to be promulgated that are consistent with NFPA 1124, 2006 edition. Alternatives could only be considered with legislative change to the statute.

**PART 4: REVIEW BY THE ORR**

**Date Regulatory Impact Statement (RIS) received:**

1-28-2014

<b>Date RIS approved:</b>	<b>2-2-2014</b>
<b>ORR assigned rule set number:</b>	<b>2013-113 LR</b>

<b>Date of disapproval:</b>	Explain:
<b>More information needed:</b>	Explain:

(ORR-RIS January 2012)