

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
111 S. Capitol Ave.; 4th Floor, Romney Building
PO Box 30004; Lansing, MI 48909
Phone (517) 335-8658 FAX (517) 335-9512

**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:

2011-006 LR

ORR rule set title:

General Industry Safety Standard Part 74 Fire Fighting

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Michigan Occupational Safety and Health Administration

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

Deborah Merryfield; 517.648.9813

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.

This rule set covers the municipal fire service. As a state plan program, MIOSHA is obligated to cover public sector employers and employees. Federal OSHA does not have jurisdiction for public employees so they would not have a need for a comparable rule set.

(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.

The states of Oregon, Washington, and New Mexico OSHA programs have similar standards pertaining to fire fighting.

(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.

MIOSHA formed an advisory committee that consisted of representatives from each of the following: Bureau of Fire Services, Michigan Association of Fire Chiefs, Michigan State Fireman’s Association, Michigan Professional Fire Fighters Union, Michigan Fire Service Instructors Association, as well as other experts in fire fighting. The State Fire Marshal attended an advisory committee meeting as well. The Firefighter Safety Training Council Act has provisions in section 8 of MCL 29.369 that the state fire marshal, with the approval of the council, shall review and monitor the state and federal standards relating to live fire training exercises in structures and make recommendations to the general industry safety standards commission for any new or modified standards necessary for the protection of firefighter trainees. These rules incorporate input from the council and staff, which were represented on the advisory committee. With the assistance of these experts, MIOSHA feels confident that these rules do not duplicate, overlap, or conflict with any other laws or rules.

Purpose and Objectives of the Rule(s):

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

The conduct that these rules are designed to change include the following:

- Keep up with the ever changing industry standards put forth by the National Fire Protection Association (NFPA). These standards have changed dramatically since September 11, 2001.
- Establishing guidelines for minimum training and development of fire service personnel.
- Ensuring that fire apparatus and equipment purchased after the effective date of this standard meets the most current NPFA recommendations.

The frequency of occurrence of this conduct occurs on a daily basis and affects not only fire fighters, but the public who are in the immediate vicinity of during fire fighting activities. The new proposed rules require a department to document training, maintenance, and inspections of equipment, showing proper

care and education of fire service activities are occurring. The training guidelines provided in Appendix A assist the department in ensuring that each employee has the training needed commensurate with their duties.

(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?

Although firefighting is inherently dangerous and firefighters are frequently placed in hazardous situations where they may be injured or killed, proper training and education can minimize the risk of the exposure to these incidents.

Some specific incidents include:

- In 2005, a fire fighter died after he was trapped in a burning house for 30 minutes (307740423 Summit Twp Fire Dept).
- In 2007, a fire fighter was killed when the fire truck he was driving collided with a sport utility vehicle. Three other fire fighters were hospitalized with injuries sustained from the collision (308845643 Detroit Fire Dept).
- In 2008, a fire fighter died when the roof of a burning building collapsed on him and two other men in his squad. Four other fire fighters were hospitalized with injuries sustained in the fire (311984025 Detroit Fire Dept Engine 23).
- In March 2011, 10 fire fighters were injured in Leslie, Michigan.

(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 scope of fire service has changed dramatically since September 11, 2001 and placed new demands on fire fighters in the areas of terrorism response, technical rescue, and potential health emergencies. Additionally, there have been significant improvements and changes in personal protective equipment, apparatus, and equipment used by firefighters. These rules will increase the safety of fire service personnel by ensuring that employees are using appropriate personal protective equipment and tools while performing their duties; are trained to conduct fire fighting operations in a safe manner; and are provided with equipment that has been constructed and maintained in a manner that will maximize safety during fire fighting operations. By updating MIOSHA's adopted consensus standards to more current versions, fire fighters in Michigan will be trained and protected in a way that is consistent with what the National Fire Protection Association has determined to be the national standard.

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

The advisory committee did not find any obsolete or unnecessary rules in their review of the rule set.

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).

Printing and distribution of the rules is estimated to be \$200. In-house training for MIOSHA staff is estimated to be \$2,000.

(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 agency has a training budget that includes educating our employees on revisions to standards.

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 cost to purchase consensus standards that were updated in this rule set is \$99.00, although many municipalities already maintain the latest version of all NFPA standards. These standards are also available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Standards Section.

The rule change regarding face shields and eye protection, R 408.17433(2), allows the firefighter to still meet NFPA guidelines, yet provides the ability to wear different personal protective equipment based on the nature of the call. This may be a cost savings for department, as the rule now allows for use of different personal protective equipment manufacturers, increasing the competitive bid process with outfitting employees with new firefighter gear. As an example, the City of Grand Rapids Fire Department expects to save several thousand dollars as it has been their practice to replace broken helmet mounted face shields (approximately 60 per year) at approximately \$37.50 each. Under the revised rules, this equipment can be replaced by a different piece of equipment that would provide improved protection that is ANSI approved, that will last longer and save the fire departments money.

(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.

The documentation of specific training, maintenance, and equipment usage requirements may increase slightly with these rule revisions. However, the change to operational practices within this documentation process is very minimal and will hardly impact any current practices currently utilized by a fire department. With the new requirements in training documentation, fire departments are required to maintain records that can be used in an Insurance Service Organization (ISO) review and reduce insurance costs to the municipality, and thus the tax payer.

(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 appropriation has been made.

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 not have a disproportionate impact on individuals based on their geographic location.

Environmental Impact:

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

These rules will not have an impact on the environment.

Small Business Impact Statement:

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

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

As these rules only apply to municipalities, no impact is anticipated to small businesses.

(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.

As these rules only apply to municipalities, no impact is anticipated to small businesses.

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

See response above.

(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 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.

See response above.

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

See response above.

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

These rules will not have a disproportionate impact on individuals based on their geographic location.

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

As these rules only apply to municipalities, no impact is anticipated to small businesses.

(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.

As these rules only apply to municipalities, no impact is anticipated to small businesses.

(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).

As these rules only apply to municipalities, no impact is anticipated to small businesses.

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

As these rules only apply to municipalities, no impact is anticipated to small businesses.

(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.

As these rules only apply to municipalities, no impact is anticipated to small businesses.

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

As these rules only apply to municipalities, no impact is anticipated to small businesses.

(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).

As these rules only apply to municipalities, no impact is anticipated to small businesses.

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.

The amendments to this rule will cause no additional burden on local government as it imposes no additional requirements to be in compliance. The amendments in this rule will impact future purchases of equipment and apparatus and will not require current equipment to be replaced. Future purchases shall be in compliance with NFPA guidelines.

(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?

31,825 fire fighters and 1,071 fire departments in Michigan would be affected by the revisions to MIOSHA Part 74 Fire Fighting. If every fire department in the state had to purchase the updated versions of the referenced NFPA standards the cost statewide would be approximately \$106,000. The rule impacts all the residents, visitors, and employees of fire departments in Michigan by improving the safety, thereby the efficiency, of firefighters.

MIOSHA believes training on the amendments to these rules would be incorporated into monthly training that is already required for fire fighters, so no additional cost would be accrued.

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

With the new requirements in training documentation, fire departments are required to maintain records that can be used in an Insurance Service Organization (ISO) review and reduce insurance costs to the municipality, and thus the tax payer.

(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.

With the new requirements in training documentation, fire departments are required to maintain records that can be used in an Insurance Service Organization (ISO) review and reduce insurance costs to the municipality, and thus the tax payer.

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

No impact is expected.

(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 affected is expected.

(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).

NFPA consensus standard costs were determined through posted website prices.

The cost of an accreditation service monitoring and evaluating fire departments was estimated by a fee schedule from the International Accreditation Service Inc., which is recognized by the Consumer Product Safety Commission.

The figures in the response to question #10 were provided by staff at the City of Grand Rapids Fire Department.

The number of fire fighters and fire department in the state of Michigan was provided by the Bureau of Fire Services.

The history of MIOSHA inspections at fire departments was provided by the Integrates Management Information System, which is MIOSHA's internal data management system.

Proposed training cost for internal MIOSHA staff was based on approximately 1-hour of training for all consultation and enforcement staff during a regularly planned staff meeting.

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.

No alternative is feasible due to the expense of retraining and educating the fire agencies.

(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 only private system that may provide a similar result is an accreditation service recognized by the Consumer Product Safety Commission. These groups evaluate and accredit fire departments to demonstrate their competence and reliability. The cost of such accreditation could exceed \$25,000 per department plus labor for preparation. This process would not be reasonable or fiscally prudent. In addition, the process does not provide safety rules for department. No other states have utilized private market-based systems.

(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.

These rules do not apply to vegetation fires. The committee was advised that the inclusion of such requirements would be cost prohibitive to smaller departments. MIOSHA staff determined that employees fighting vegetative cover fires would be protected by General Industry Safety Part 33 "Personal Protective Equipment" and Public Act 154. The committee also was asked by the Michigan DNRE Forest Management Section to include the DNRE in promulgating any rule covering vegetative fires.

Date Regulatory Impact Statement (RIS) received:

10-11-12

Date RIS approved:	11-7-12
ORR assigned rule set number:	2011-006 LR

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

(ORR-RIS January 2012)