

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:

2012-120 LR

ORR rule set title:

Health Care Facilities Fire Safety Rules

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Bureau of Fire Services

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

Jim Elenbaas, Fire Marshal Supervisor – 517-241-8847

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.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

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.

Healthcare occupancies within the United States are regulated, licensed, and accredited by agencies that include state oversight and nationally adjudicated agencies which are primarily the Department of Health and Human Services, Centers for Medicare and Medicaid (CMS), and The Joint Commission formerly known as The Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The intent of the regulatory agencies is to provide uniform structure and standards that enhance and promote safety, regulation, and compliance with promulgated codes and standards related to the healthcare industry.

CMS and the Joint Commission have adopted and are presently utilizing NFPA 101 Life Safety Code (2000 edition) to provide minimum requirements with regard to function, design, operation, and maintenance of healthcare facilities.

State healthcare occupancies are currently being surveyed and inspected by the aforementioned nationally adopted codes and standards that satisfy the State's requirements for compliance. All of the regulating agencies, JCAHO, CMS and the state use the same national standard being the Life Safety Code (LSC).

The National Fire Protection (NFPA) 101- Life Safety Code is a nationally recognized fire safety standard that is revised and published every 3 years. The new health care fire safety rules propose to adopt the 2012 LSC. This is a change from the current state rules that reference the 2006 LSC and the 2000 LSC used by the Centers for Medicare and Medicaid Services (CMS).

Outside of homes for the aged, the remaining state licensed health care occupancies also participate in the CMS program and are subject to regular or random inspection to the 2000 LSC. CMS is also reviewing the 2012 LSC for adoption. CMS has additionally allowed nursing homes to utilize several of the new, less stringent requirements in the 2012 LSC through the use of waivers that are not recognized by the state rules. CMS adopts a national standard without amending it. When their adoption process is complete, it should eliminate any of the current conflicts between the agencies and their respective rules.

(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.

Healthcare occupancies within the United States are regulated, licensed, and accredited by agencies that include state oversight and nationally adjudicated agencies which are primarily the Department of Health and Human Services, Centers for Medicare and Medicaid (CMS), and The Joint Commission formerly known as The Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The intent of the regulatory agencies is to provide uniform structure and standards that enhance and promote safety, regulation, and compliance with promulgated codes and standards related to the healthcare industry.

CMS and the Joint Commission have adopted and are presently utilizing NFPA 101 Life Safety Code (2000 edition) to provide minimum requirements with regard to function, design, operation, and maintenance of healthcare facilities.

(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.

These health care fire safety rules are directly related to the Centers for Medicare and Medicaid Services (CMS). Facilities such as nursing homes, hospitals, freestanding outpatient facilities (FSOF) and hospice participate in this federal monetary reimbursement program. Both CMS and these state rules use the NFPA standard, 101 Life Safety Code (LSC). CMS uses the 2000 LSC while these rules adopt by reference the most current 2012 edition. The amendments have been kept to a minimum to avoid as little enforcement conflict as possible. CMS is in the process of reviewing the 2012 edition of the LSC for adoption and is currently allowing facilities to utilize less-stringent requirements contained within the 2012 LSC through federal waivers. Adoption of these rules would eliminate the current conflict with the granting of federal waivers while still maintaining consistent rules with CMS requirements.

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 proposed rules only update to the latest edition of the Life Safety Code. No current behaviors/practices have been identified as deficient that require the change to the rules. The current practice of CMS allows for the use of waivers to utilize portions of the 2012 LSC that are less stringent than current requirements in the CMS enforced 2000 LSC. The adoption of these rules would allow current regulated facilities to use the provisions of the federal waiver without being out of compliance with state regulations.

(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?

No harm is identified.

(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.

As noted in questions above, the proposed rules adopt the 2012 edition of the Life Safety Code. The Life Safety Code is the primary standard utilized by CMS and other national accreditation agencies for health care. The proposed rules limit any state amendments to those necessary to maintain compliance and consistency with other state laws, established practices, and CMS directives.

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

No portions of the existing rules are identified as obsolete.

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).

No additional costs to the agency are anticipated as all facilities are currently under an annual inspection cycle.

(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).

Funding for enforcement of the Health Care Fire Safety Rules comes from 4 primary sources:

- Annual hospital inspection fees – These fees are established in the agency’s annual appropriations bill. The authority for the fees comes from PA 207 of 1941, as amended, Section 29.2c being MCL 29.2c.
- Hospital plan review fees – These fees are established in the agency’s annual appropriations bill. The authority for the fees comes from PA 207 of 1941, as amended, Section 29.2c being MCL 29.2c.
- Interagency agreement with Bureau of Health Care Services – The agreement requires BFS to conduct the Life Safety Code portion of CMS surveys. The funding comes directly from Title XVIII Medicare and Title XIX Medicaid federal funding sources.
- Interagency agreement with Department of Human Services, Bureau of Child and Adult Licensing – The agreement provides revenue of \$150,000 per year for conducting fire safety inspections for homes for the aged and adult foster care facilities with 7 or more residents (covered by a different set of fire safety 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.

No other agency or governmental unit revenues are impacted by these rules.

(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.

No other governmental units are impacted by these rules.

(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 or is required.

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).

The proposed rules will have no impacts either positive or negative for rural areas.

Environmental Impact:

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

No environmental impacts.

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.

These health care fire safety rules are directly related to the Centers for Medicare and Medicaid Services (CMS). Facilities such as nursing homes, hospitals, FSOF and hospice participate in this federal monetary reimbursement program. Both CMS and these state rules use the NFPA standard, 101 Life Safety Code (LSC). No exemptions for small businesses are provided under the federal statutes.

Homes for the aged are not under the authority of CMS. Part 213, Article 17 of the Public Health Code (Act 268 of 1978) regulates homes for the aged as a limited healthcare facility and are required to meet minimum design standards based upon compliance with NFPA standards.

(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.

See discussion under Item #15 above.

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

Hospitals – 169
Psychiatric Hospitals – 9
State-Owned Hospital – 3
Nursing Homes (include Hospice) – 447
Freestanding Outpatient Facilities/Ambulatory Surgical Centers (FSOF/ASC) – 130
Homes for the Aged – 204

The number of facilities that would qualify as a small business cannot be directly determined. Most of the hospitals and nursing homes are owned and/or operated by a larger corporation and a majority of the homes for the aged are also corporately owned and operated.

(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.

No different reporting requirements or administrative costs are established by these rules.

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

No additional reporting requirements are established by these rules.

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

The 2012 LSC allows the use of performance based options. Instead of requiring strict compliance with the code requirements, this option allows alternatives for life safety compliance. The LSC also has special provisions for renovations of existing buildings in Chapter 43 – Building Rehabilitation. This chapter addresses rehabilitation in existing buildings and also allows latitude when projects deal with repair, renovation, modification and reconstruction.

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

No impacts are expected.

(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).

No additional reporting requirements are established by these rules.

(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.

See the discussion under Item #25 below. No small businesses would fall under the classification of a high rise building and be required to comply with the sprinkler provisions.

(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).

No additional costs are associated with these rules.

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

All facilities are held to the same standards so no harm or advantage is present.

(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 additional costs for the agency would be incurred by the lesser standard.

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

There could be a large negative impact for the public, if smaller businesses were exempt or held to a lesser standard of public safety than larger businesses. The small businesses would also have a higher risk if they did not adhere to the same standards as for larger businesses.

The proposed rules, along with other regulatory agency requirements at the state and federal level, establish minimum requirements that are considered essential for life safety. Reduction of those requirements for small business would not be in the public interest.

(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 ad-hoc committee had representatives from the following organizations that represent a variety of small business operators throughout the state:

- Healthcare Association of Michigan – representing nursing and rehabilitation communities including for and not for profit, county medical care and hospital based providers
- Michigan Center for Assisted Living – representing independent senior housing and assisted living communities including: housing with services establishments, homes for the aged and adult foster care homes
- Leading Age, Michigan – representing home and community-based services, home health and hospice care, senior housing, assisted living, homes for the aged, county medical care facilities, hospital long-term care units and nursing homes

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.

Door Inspections – The proposed rules require documentation of annual inspections of specific doors throughout facilities. These doors are routinely monitored and inspected currently. The rule now requires that the on-going inspections be documented by a person knowledgeable in the door components. The additional time and/or cost of documenting the inspections would be negligible.

High Rise Sprinkler Protection – The proposed rules require that all existing high-rise healthcare facilities be completed protected by automatic fire sprinklers within 12 years of the adoption of the rules. This requirement is contained within the 2012 LSC and not part of a state amendment. Of the 168 hospitals in the state, only 32 are classified as high-rise (floors greater than 75 feet above the level of fire department access). Eleven of the high-rise buildings (one currently unoccupied) have portions that are not protected by sprinklers. The estimated cost for the installation of sprinklers in existing buildings is \$2.00 per square foot. It should also be noted that with the adoption of the 2012 LSC by CMS, the sprinkler mandate will also be required at the federal level. Facilities have been aware of the potential for this requirement and have on-going projects to bring their facilities into compliance over time.

All other revisions either clarify existing requirements or relax current requirements to allow more flexibility for regulated facilities.

(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?

These rules do not have any effects at the individual level.

(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 expected.

(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 will maintain consistency with current practices of CMS. CMS is currently allowing facilities to comply with portions of the 2012 LSC through the waiver process that is not currently available under the state rules. In addition, CMS is currently nearing completion of the adoption of the 2012 LSC for their fire safety requirements for participation.

The proposed rules also have some relaxed requirements from the current edition. These changes have been made through a national, consensus-based development process utilizing fire loss data and new technologies. In addition, there is a current movement nationwide to establish a more home-like environment in the long-term care settings. The proposed rules incorporate these new approaches while maintaining a minimum level of life safety for a vulnerable population.

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

No impacts are 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.

None.

(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 sprinkler cost estimates come from the National Fire Sprinkler Association Frequently Asked Questions available at http://www.nfsa.tv/info_items/FAQ_Fire_Sprinkler.pdf.

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 alternatives have been identified.

(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.

Because the licensure and regulation of health care occupancies is a responsibility of state government, a regulatory scheme within the health care industry that was independent of state intervention could not be established.

CMS does utilize a partial market-based approach through the use of recognized accreditation agencies. These agencies can contract with health care facilities and by maintaining compliance with the accrediting body, they are deemed to be compliant with CMS requirements. However, routine outside inspections by contracted governmental agencies are conducted at random locations to verify that the accrediting body is maintaining the required standards.

(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 proposed rules update a current set of regulations and were developed with the assistance of an ad-hoc committee. The committee consisted of representatives from the Bureau of Fire Services, other health care regulatory agencies, fire service professionals, and a number of representatives from the regulated industry. The industry representatives included patient advocates, facility representatives, and industry advocacy organizations. No alternatives were brought to the committee and all committee members voiced approval for the rules as currently proposed.

Additional Information

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

The rules will be posted to the Bureau's website upon final approval. The ad-hoc committee also has representatives from all of the major provider organizations that will assist in distributing information regarding the new rules. All of the affected facilities currently receive annual inspections by the Bureau. During these inspections, facilities will be further educated on the new rule requirements.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

10-30-2013

Date RIS approved:	3-6-2014
ORR assigned rule set number:	2013-120 LR

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

(ORR-RIS October 2012)