

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:

2013-028LR

ORR rule set title:

Storage and Handling of Flammable and Combustible Liquids Rules

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Bureau of Fire Services/Storage Tank Division

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

Marcia Poxson; 517-373-3290

Reviewed by Department Regulatory Affairs Officer:

Elizabeth Arasim

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.

There are no federal rules that require the regulation of flammable and combustible liquids (FL/CL). These rules are promulgated under the Michigan Fire Prevention Code, 1941 PA 207, as amended, and adopt by reference a national standard for fire protection, as specified in the National Fire Protection Association (NFPA) pamphlets (codes) 30, 30A, 31 and 37. The intent is to rescind the current rules, in their entirety, and adopt the current edition of these NFPA pamphlets with the inclusion of Michigan specific amendments related to the administration of the program and any amendments requested by a bureau organized ad hoc committee. These rules will update the current rules to standard industry practices concerning the storage and handling of FL/CL liquids.

(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 proposed adoption of NFPA standards as a regulatory basis for the storage and handling of aboveground and underground storage tanks is commonly used throughout the United States. Michigan specific amendments are being made to the adopted codes to reflect regulatory requirements related to the administration of the program, i.e. application for installation of facility, right to file for variance, etc., and ad hoc committee requested alterations.

(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.

In accordance with the Michigan Fire Prevention Code, 1941 PA 207, as amended, the proposed rules govern the storage and handling of FL/CL. The only federal standard that defines regulation of these storage tank systems is the federal oil pollution prevention regulation published under the federal clean water act, which requires aboveground storage tank facilities to develop and implement spill prevention, control, and countermeasure (SPCC) requirements that are administered by the U.S. Environmental Protection Agency. Although, R 324.2003 of the Part 5 Spillage of Oil and Polluting Materials Rules provides for an exemption from the oil pollution incident prevention plan requirements for facilities that are regulated under the Michigan Fire Protection Code, these rules do not add any environmental safeguards to account for the Part 5 exemption through compliance with these 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?

These rules protect employees and the general public from environmental exposures and potential fire hazards that are associated with FL/CL. This revision is an update to the current rules. There have been rules regulating FL/CL in effect since 1942. The rules were last revised in 2003 when they were

promulgated to reference NFPA pamphlets 30, 30A, 31, and 37 with edition versions from 1998 to 2001. Since that time, there have been updates to these NFPA pamphlets. There is no behavior that the proposed rules are designed to alter. Instead, the proposed rules will maintain current conduct for the safe storage, dispensing, maintenance, and use of FL/CL both environmentally and from a fire safety point of view.

(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?

The rules provide safeguards for the storage and handling of FL/CL to prevent fire, explosion, public health, and environmental hazards from occurring. The main complaint regarding the rules has been that the Michigan specific amendments to the NFPA pamphlet make the rules extremely difficult to read. This is caused by the fact that the NFPA pamphlets are copyrighted. Therefore, the Department cannot produce a document that combines the NFPA wording with the amendments. The elimination of the Michigan specific amendments, except for those that pertain to the administration of the program, will alleviate this problem.

(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.

These rules protect employees and the general public from environmental exposures and potential fire hazards that are associated with FL/CL. The rules provide safeguards for the storage and handling of FL/CL to prevent fire, explosion, public health, and environmental hazards from occurring.

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

The current rule set was last revised in 2003. Consequently, the editions of the NFPA pamphlets that are adopted by reference in the rules reflect the 1998, m2000, and 2001 editions of the various pamphlets. These rules will be rescinded and new rules will be adopted which will reference the current editions of these pamphlets which were update din 2010 – 2012.

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).

There would be no additional cost associated with these rules. The Bureau is currently mandated by statute to review plans prior to installation of aboveground and underground storage tanks, and to perform triennially facility inspections.

(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).

Under the Michigan Fire Prevention Code, 1941 PA 207, as amended, the Bureau collects an annual fee, of \$61.50 per tank for aboveground tanks; and under the Natural Resources and Environmental Protection Act, 1994 PA 451, a fee of \$100 per underground tank, toward the regulation of these 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.

There should be minimal cost to other state or local government agencies for the ongoing implementation of these rules. The responsibility for the implementation of the rules is not delegated to local government agencies, and local governments are not allowed to be more stringent by statute.

(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 implementation of these rules is not delegated to local government units and local governments are not allowed under the Michigan Fire Prevention Code to impose regulations that are more stringent than the Code and these rules. While these rules require continued record keeping of tank system maintenance, these records must be maintained by the facility owners and not a local governmental unit.

(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).

By statute the Bureau collects an annual fee toward the administration of these rules. Additional costs to operate the program that are not covered by the annual fee are paid through a general fund appropriation.

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).

There would be no additional impact on the regulated, public or private, community in rural areas with the adoption of these rules.

Environmental Impact:

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

The rules provide for the safe storage, dispensing, maintenance, and use of FL/CL both environmentally and from a fire safety point of view.

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.

Setting lesser standards could adversely affect small businesses by exposing employees to fire, explosion, and environmental hazards.

(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.

Many smaller installations (tanks of 1,100 gallons or less) were exempted from a large portion of the regulations.

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

The number of small businesses affected by these rules is around 200. However, there are not any additional requirements that these business do not already address.

(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.

Setting lesser or differing standards for small business could adversely affect small businesses by exposing employees to fire, explosion, and environmental hazards.

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

There would be no disproportionate impact created by these rules. There have been fees by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. All FL/CL tank systems currently in compliance with the existing rules would not be required to install new equipment or perform any new compliance requirement.

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

There would be no disproportionate impact created by these rules. The rules allow a facility to apply for a variance to the rules when the facility provides reason for non-compliance and safety equivalency to fire, life and environment.

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

There would be no disproportionate impact created by these rules on small business.

(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).

There would be no disproportionate impact created by these rules on small business. There have been fees by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. This does not apply to small businesses having storage tanks of 1,100 gallons or less.

(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.

There would be no disproportionate impact created by these rules on small business. There have been fees by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. This does not apply to small businesses having storage tanks of 1,100 gallons or less.

(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).

There would be no legal or administrative expenses incurred with the revision of these rules. Small businesses with aboveground tanks of 1,100 gallons or less are exempt from the record keeping and annual inspection fees.

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

Small businesses would not suffer any adverse reaction to competition in the marketplace by complying with these rules.

(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.

There would be no additional costs by exempting or setting lesser standards for small businesses.

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

Setting lesser standards could adversely affect small businesses by exposing employees to fire, explosion, and environmental hazards.

(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 Bureau formed an advisory committee which included the following groups: Associated Petroleum Industries of Michigan, Michigan Chemistry Council, Michigan Department of Agriculture, Michigan Association of Fire Chiefs, Michigan Fire Inspectors Society, Michigan Manufacturers Association, Michigan Petroleum Association, Michigan State Firemen's Association, Petroleum Equipment Institute, Associated Food and Petroleum Dealers, and Steel Tank Institute. In addition, the Department of Environmental Quality was invited to ensure parity between the programs.

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.

There have been fees to FL/CL tank systems by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. This does not apply to small businesses having storage tanks of 1,100 gallons or less. There will be no additional costs to businesses as a result of these proposed 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?

These rules apply to FL/CL tank systems. There have been fees by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. This does not apply to small businesses having storage tanks of 1,100 gallons or less. There is no cost to individuals 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).

There is no cost increase or decrease as a result of these proposed rules. There have been fees by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. This does not apply to small businesses having storage tanks of 1,100 gallons or less.

(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 current rules were developed for fire safety. These draft rules address additional fire and explosion hazards brought about by changes in technologies in the last ten years, and to help continue to ensure worker and public safety.

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

These proposed rules would have no impact on business growth or job creation or elimination. There have been fees by statute since the 1970s for plan review and triennial inspection. These are found in Section 29.5d of Act 207. This does not apply to small businesses having storage tanks of 1,100 gallons or less.

(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.

There would be no disproportionate impact created by these rules.

(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).

Steel Tank Institute; Petroleum Equipment Institute; Associated Petroleum Industries of Michigan; Associated Food and Petroleum Dealers; and personal knowledge of the industry and the storage tank database.

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.

Other than the fees not applying to small businesses having storage tanks of 1,100 gallons or less there is no alternative to complying with these rules for facilities with FL/CL tank systems, per Act 207.

(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.

Having these FL/CL tank systems regulated on a state level creates a common/level regulatory program where every facility is treated in the same manner. Out-sourcing the compliance process could create disproportionate compliance between facilities. States that use “private” companies to perform these compliance inspections still must oversee/supervise these companies.

(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.

Any potential alternate to amending the adoption of NFPA Code was discussed during the Ad Hoc Committee process and none was recommended by the Committee.

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.

Aboveground storage locations that supply FL/CL and which have an individual tank storage capacity of more than 1,100 gallons must have their plans reviewed and certified by the Bureau. Following certification by the Bureau the facility is responsible for annual inspection/certification fees. A new owner of a FL/CL tank facility or a facility with changes to the FL/CL tank system is required to fill out a “Change of Information Form”. All forms are available under “Forms, Op Memos, and Publications” on the storage tank website: www.michigan.gov/storage tanks .

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PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

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Date RIS approved:	
ORR assigned rule set number:	

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

(ORR-RIS October 2012)