

Rule Summary and Fiscal Analysis (Part A)**Department of Commerce**

Agency Name

Division of State Fire Marshal

Division

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1301:7-7-01

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Administration.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **SB237**General Assembly: **127**Sponsor: **Bill Shaffer**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **3731.02, 3737.17, 3737.22, 3737.65, 3737.82, 3737.83, 3737.85, 3737.86, 3743.05, 3743.18, 3743.53, Am. Sub. H.B. 95 of the 125th General Assembly, Sec 29**

5. Statute(s) the rule, as filed, amplifies or implements: **3731.01, 3731.02, 3731.03, 3731.05, 3731.06, 3731.09, 3731.10, 3731.11, 3731.12, 3731.15, 3737.02, 3737.14, 3737.17, 3737.22, 3737.23, 3737.24, 3737.41, 3737.42, 3737.43, 3737.51, 3737.80, 3737.82, 3737.83, 3737.84, 3737.85, 3737.86, 3737.88, 3743.05, 3743.06, 3743.18, 3743.19,**

**3743.53, 3743.58, 3781.03, Am. Sub. H.B.
95 of the 125th General Assembly, Sec 29**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The State Fire Marshal proposes to adopt substantial portions of Chapter 1 of the 2009 International Fire Code as amended, to revise and update the administrative rules comprising the Ohio Fire Code, and to implement State Fire Marshal administrative, operational, and licensing provisions. The State Fire Marshal also proposes to incorporate rules related to S.B. 237 regarding hotel/motels. Finally, this rule is being proposed to comply with five year rule review requirements.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule contains administrative provisions for implementing fire code regulations affecting or relating to structures, processes and premises and safeguards from the hazard of fire or explosion. This rule provides for State Fire Marshal administration of various code enforcement, administrative and licensing functions. For further details on the changes to this rule, please see the attached exhibit "A".

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

Materials incorporated by reference in this rule are listed in O.A.C. 1301:7-7-47 and are generally available to affected persons (including members of the fire service, persons responsible for life safety in public occupancies, and design professionals) in the following manner:

1. All text or materials are published by either other governmental agencies, private organizations or industry associations. All of these publications may be obtained by the publishing companies that distribute this material nationally or by any person, without any restriction, from the organization that promulgated the material or text. Some of these reference materials are free and some may be purchased for a reasonable fee. O.A.C. 1301:7-7-47 lists the incorporated material and contact information for each of the organizations that publish the listed incorporated material.

2. Most of the incorporated material is also available at Ohio public libraries, the Division of State Fire Marshal, the Board of Building Standards, or at local

government offices, including fire departments.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

Not Applicable.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase/decrease** either **revenues/ expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will increase revenues.

\$49,031.00

This proposed rule would not result in increases or decreases in revenue in the current biennium as the effective date will be November 1, 2011.

Please see attached exhibit "B" for further detail on specific fee increases.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Per internal/agency sources, the cost of compliance with the rule changes depends on the fee.

A more detailed analysis is contained on the attached exhibit "B".

Also, the 2011 Ohio Fire Code will be available on the State Fire Marshal website with free access. Thus, purchase of a hard copy of the new code is optional and not required.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**Department of Commerce,
Division of State Fire Marshal**

**Ohio Fire Code
RSFA Supplement
Rule 1301:7-7-01**

EXHIBIT A

- Rule 1** This rule contains new sections which have been moved or restructured. Other new language was added to clarify existing requirements and/or to be consistent with the 2009 International Fire Code (IFC). Finally, the following amended sections are noteworthy or contain a new requirement but have no or de minimis fiscal impact/cost of compliance:
- 101.2.2 Clarifies Scope of code which already exists but previously was not written in such detail.
 - 101.5 This Ohio language is deleted as a similar requirement was added to the 2009 IFC and is added in Section 102.11.
 - 101.6 The additional language proposed for this section helps clarify the relationship between local fire codes and state fire codes. This language is derived from the Revised Code (3737.82) descriptions of the scope of local fire codes and the state fire code and it does not create or diminish any local fire code official or fire code authority.
 - 102.1 The new language is a restructuring of the rescinded language.
 - 102.1.2 The new language clarifies the scope of the references to the applicability of the Ohio Fire Code to “agricultural premises” in both this section and in Ohio Administrative Code §1301:7-7-01(A)(2)(b), Ohio Fire Code §101.2.2. This does not impose a new requirement.
 - 102.3 This new section consolidates the previously scattered occupancy rules and clearly sets forth the circumstances when such rules may be applied. This section does not create any new or diminish any existing authorities.
 - 102.3.1 The intent of this change would be to require a copy of the certificate of occupancy to be included in the Fire safety Plan where such a plan is required by Chapter 4 of the OFC. Since the revised wording would not require existing buildings to obtain a certificate of occupancy, unless already required by OBC Section 110, there would be no additional cost beyond that of a single photocopy.

EXHIBIT "B"

RSFA 1301:7-7-01

Department of Commerce
Division of State Fire Marshal

FISCAL IMPACT:

OFC Section	Title of Fee	<u>Additional</u> Revenue Received Per Person/Entity	Approximate # of Entities Affected	Total Yearly Increase in Revenue
112.3	Child DayCare/Foster Home Inspection Fees	\$25.00	119 per year	\$2975.00
112.3	Second and Subsequent Inspection Fees	\$25.00 for second inspection. \$50.00 increments for subsequent inspections	250 (hotels)	\$19,500.00
118.7.4.2	Late Renewal Fee for Hotel Licenses	10% of total fee Average of \$11.65	172	\$2004.00
118.7.4.5/6	Hotel "Room Change" Fee	Estimated average of \$198	124	\$24552.00
			TOTAL	\$49,031.00

COST OF COMPLIANCE:

OFC Section	Title of Fee	<u>Additional</u> Cost of Compliance Per Entity	Approximate # of Persons/Entities Affected
112.3	Child DayCare/Foster Home Inspection Fees	\$25.00	119 per year
112.3	Second and Subsequent Inspection Fees	\$25.00 for second inspection. \$50.00 increments for subsequent inspections	250 (hotels)
118.7.4.2	Late Renewal Fee for Hotel Licenses	10% of total fee Average of \$11.65	172
118.7.4.5/6	Hotel "New Facility" Fee	Estimated \$198 per applicant	124

ADDITIONAL DETAILS:

OFC SECTION 112.3

- Inspection fees: The SFM conducts over 14,000 inspections each year and charges fees for initial inspections, re-inspections, and has a special fee structure for hotel inspections, child daycare inspections, and explosive storage inspection. Of those inspections, the SFM changed two of the fees: child daycare/foster homes and second and subsequent re-inspection fees.
 - Child Daycare/Foster Homes: Language was changed to increase the fire safety inspection fees for child daycare and child foster homes caring for eleven or fewer children from twenty-five to fifty dollars. In 2010, 119 fire safety inspections for these types of structures occurred out of 14,000 total inspections (0.9%).
 - **If approximately 119 fire safety inspections take place in the calendar year following the effective date of this rule, the State Fire Marshal's revenue will increase by approximately \$2975.00.**
 - **The cost of compliance per daycare/foster home is an additional \$25.00 per inspection. The total increased cost of compliance for all child daycare/foster homes is approximately \$2975.00 per year (119 x \$25).**

- **A \$25 fee does not cover the administrative cost of performing this inspection. The increased fee will cover a greater portion of the administrative costs associated with inspecting daycares/foster homes.**
- Second and Subsequent Re-inspection fees: Language was amended to restructure and modestly increase fire safety re-inspection fees. The initial inspection fee remains at one hundred dollars. The fee for the first re-inspection remains at fifty dollars. The fee for the second re-inspection increases from fifty to seventy-five dollars. Subsequent re-inspection fees are increased in fifty dollar increments (e.g., third re-inspection \$125, fourth re-inspection \$175, etc).
 - **The State Fire Marshal will receive additional revenue of \$25.00 for second re-inspections and an additional \$50.00 increase for each subsequent re-inspection. See chart below for total estimated revenue.**
 - **The cost of compliance to these rule changes is zero if a person does not incur second and subsequent re-inspections. However, should a person incur a second inspection the additional cost is \$25.00 and \$50.00 more in increments for each subsequent re-inspection.**
 - **In 2010, without the incentive to reduce the number of re-inspections provided by the proposed rule, 147 second re-inspections, 54 third inspections, and 23 4th re-inspections, were conducted for hotels alone (estimated). Twenty six (26) hotels had five or more re-inspections. See Table 1 below for an estimate of the additional cost of compliance for hotels if re-inspection rates stayed at 2010 levels. Again, it is anticipated that significantly fewer re-inspections would be required once the new incentive language is in place.**
 - **The increase in these fees acts as an incentive for entities to promptly comply with the Ohio Fire Code and covers a greater portion of the administrative costs in performing multiple re-inspections.**

TABLE 1 - Estimated additional cost of compliance for hotels only if re-inspection rates stayed at 2010 levels*

# of Re-Inspections	# of Hotels Affected	<u>Additional</u> Cost of Re-Inspection Per Hotel	Total Additional Cost of Compliance
1		0	0.00
2	147	25.00	3675.00
3	54	75.00	6750.00
4	23	125.00	2875.00
5	9	175.00	1575.00
6	8	225.00	1800.00
7	5	275.00	1375.00
8	2	325.00	650.00
9	1	375.00	375.00
10	1	425.00	425.00
Total reinspections	250	Total	\$19,500.00

***NOTE:** Based on 2010 numbers, only 10 of these facilities required 27 inspections (5 or more) that alone cost \$6200.00 in re-inspection fees, accounting for 32% of all hotel re-inspection fees. It is anticipated that significantly fewer re-inspections would be required once the new incentive language is in place. This chart only provides data for hotels. There may be other facilities that require re-inspections. The additional cost of compliance for these other facilities is expected to be minimal as they comprise a smaller portion of the total amount of re-inspections performed.

OFC 118.7.4.2

- Late Renewal Fee for Hotel Licenses: The renewal fee for each hotel or SRO facility license is due on December 1st of each year and is a minimum of one hundred dollars or one dollar per room, whichever is greater. OFC 118.7.4.2 was added to the proposed OFC and provides licensees a grace period until December 31st to pay their renewal fees. If a licensee renews after this date, it will be assessed a late renewal fee of 10 percent.
- This late fee is proposed to act as a deterrent for licensees who do not take advantage of the one month grace period. Licensees who fail to renew by the end of the grace period are operating without a license, a violation of the Ohio Fire Code. This fee will deter licensees from failing to renew and therefore operating in violation of the OFC.
 - **Based on the number of late licensees in 2010, this rule change will result in an approximately \$2004 revenue increase per calendar year for the State Fire Marshal.**
 - **In 2010, the total fees paid by the 172 late licensees were \$20,046.00. 1387 licensees renewed on time while 172 licensees renewed after the grace period expired. (Specifically, 62 paid in January, 31 paid in February, 58 paid in March and 21 paid in April or later.) Had a ten percent late fee been charged against those who did not pay by the end of the one month grace period, the 172 licensees would have been assessed late fees of \$2004. Thus, it will cost a late licensee on average an additional \$11.65. However, a grace period at the time may have also served as an incentive for licensees to renew within the grace period thus requiring fewer (or no) late fees to be assessed.**

118.7.4.5118.7.4.6

- “Room Change” Fee: Hotels/SRO facilities add rooms to their license for a variety of reasons: new construction, sale of the premise, maintenance issues, or to return the room to service after renovation or a shut down by an agency. Allowing hotels/SROs the ability to add and remove rooms from their license permits them to stay in business and continue operating legally even when portions of their facility are out of service.
- Past practice has been to charge a \$25 change application fee whenever a hotel/SRO facility wanted to add newly constructed rooms or rooms previously licensed to its license. A legal review of the relevant OFC determined that OFC 118.4.2, as currently written, requires that a hotel/SRO facility adding or deleting rooms pay the “new facility” fee of \$2,000 to \$4,000 depending on the facility type. Due to the amount of this fee and

the impending update of the fire code, the SFM continued to charge hotels/SRO facilities only the \$25.00 fee. However, \$25.00 does not cover the administrative costs associated with adding rooms to a license. For example, when a hotel/SRO adds rooms to its license, a SFM inspector must physically visit and inspect the premises. Hotels/SROs vary in size, complexity and location, causing this process to sometimes take days to complete. A 20 room addition may take two to three hours to inspect. Therefore, the proposed 2011 Ohio Fire Code was amended to allow a hotel/SRO to add or delete rooms at a fee established specifically to cover the average administrative costs (e.g., \$200), which is significantly less than the \$2000-\$4000 “new facility” fee previously required for some facilities.

- The fee for the addition of newly constructed rooms is five hundred dollars for one to twenty guestroom additions, one thousand dollars for more than twenty guestroom additions, and fifteen hundred dollars for the addition of guestrooms and/or places of assembly such as restaurants, lounges, banquet facilities, mercantile or office space.
- The fee for adding a previously licensed portion is two hundred dollars for one to twenty guestroom additions, four hundred dollars for more than twenty guestroom additions, and five hundred dollars for the addition of guestrooms and/or places of assembly such as restaurants, lounges, banquet facilities, mercantile or office space.
 - **The State Fire Marshal estimates that the majority of “room change” applicants are adding on previously licensed portions of twenty or less rooms, thus paying the smaller fee (\$200). In 2010 it is estimated that 124 licensees added on rooms and 95% of these licensees added on twenty or less rooms. Under past practice, these 124 applicants would have paid a total of \$3100.00 in fees. If, however, fees were implemented pursuant to the code as written, the 124 applicants would have paid approximately \$248,000.00 (124 x 2000) in fees.**
 - **Under the amended rule, compared to the fees as implemented in practice, -- if 118 applicants paid \$200.00 (for twenty previously licensed rooms) and 6 paid the average fee of \$683.00-- the total fees paid by these applicants would amount to \$27698. Thus, the additional revenue and cost of compliance is estimated to be \$24598 (\$27698-\$3100) in total or an average of \$198 per applicant. (There is no increase in the cost of compliance if the proposed fee is compared to the fees required under the current code as written.)**
 - **Administrative costs are conservatively estimated to be between \$130.00 and \$332.50 dollars, an average of \$175.00 per facility for a room change application for the addition of 20 rooms or less.**
 - **The fees as provided for in the proposed fire code will cover a greater portion of the administrative costs associated with the application to add newly constructed or previously licensed rooms to a hotel/SRO license while rescinding the language that provided for a significantly higher fee.**