

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-7-01

Rule Type: New

Rule Title/Tagline: Scope and Administration.

Agency Name: Department of Commerce

Division: Division of State Fire Marshal

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3737.832, 3737.83, 3737.82, 3737.17, 3731.02, 3721.07, 3721.032, 3737.22(A), 5104.051, 5104.05, 3743.07, 3743.08, 3743.18, 3743.19, 3743.20, 3743.21, 3743.40, 3743.59, 3743.68, 3737.86, 3737.85, 3737.842
5. **What statute(s) does the rule implement or amplify?** 3737.83, 5104.01, 5104.05, 3781.03, 3743.07, 3743.08, 3743.18, 3743.19, 3743.20, 3743.21, 3743.40, 3743.59, 3743.68, 3737, 3731, 3721.032, 3721.02, 3737.82, 3737.22(A)
6. **What are the reasons for proposing the rule?**

The State Fire Marshal (SFM) proposes to rescind the currently existing 2011 Ohio Fire Code (OFC) and adopt the proposed rules, to be known as the 2017 OFC, for the purpose of five year rule review and to update the rule provisions to conform to national standards, to coordinate with updates to the Ohio Building Code (OBC), and to clarify and restructure previously existing rules to better set forth RC requirements,

enforcement procedures, and to align the provisions with current practice. The rules will concern all matters of fire safety and will set the minimum standards in this state for safeguarding life and property from fire and explosion.

Notwithstanding Ohioizations that have been made, the rules are (as in the past) primarily based on the incorporation of the International Fire Code (IFC), here the 2015 version. With the incorporation of the 2015 IFC, the vast majority of the OFC was reorganized. The first ten rules address the same topics. However, all other rules have been moved to new locations; in general, the rule content will not change. Non-substantive editorial changes have been made throughout the OFC to reflect the new references. Previously, the OFC contained 47 rules, with rule 47 being 'referenced standards.' The new format contains 80 rules, with Rule 80 being 'referenced standards.' The overall / total number of substantive rules, however, has not changed (with the exception of Rule 39); there are large blocks of rule numbers that have been reserved for future use.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This proposed rule provides scoping and applicability provisions for the OFC; the rule outlines permitting authority, inspection authority, and enforcement authority and procedures; the rule also contains hotel and SRO facility licensing requirements and procedures; finally, the rule contains special provisions regarding loan and grant applications, administrative hearing procedures, Type-A and B daycare homes, and fire department recognition awards.

Non-substantive edits and clarifications were made throughout the rule. All definitions were moved to Rule 2. Edits were made to the rule to clarify when the code does and does not apply (101 and 102, generally). Language was also added to clarify the effect of building code occupancy approvals on the construction and design provisions of the OFC and the effect of State Board of Building Appeals (BBA) variances and orders affecting matters of life safety (102.3.4). Language regarding the applicability of referenced standards, the application of other laws, and resolution of conflicting provisions was clarified and reorganized (102.7; 102.8; 102.9). Clarifying language was added regarding the application of the OFC throughout the state, the authority of local jurisdictions to enact a local fire code, the effect of those local fire codes, and liability regarding enforcement of the OFC (103.1-103.5). Language was added to clarify that the State Fire Marshal is the final decision maker regarding matters of interpreting the OFC (104.1). Provision were added to better coordinate and limit the enforcement of the OFC's construction and design provisions for matters also subject to the OBC (104.2.2-104.2.2.2). Right of entry and warrant authority provisions were clarified (104.3-104.3.1). Maintenance of fire records and reporting requirements regarding fires were enhanced (104.6.3-104.6.3.1). Language regarding BBA variance authority and applicability was added (104.8.4). Approval language for

the use of alternative materials and methods was edited (104.8.4). The potential criminal nature of fire investigations has been clarified (104.10). The definition of major fire and reporting requirements for such have been modified (104.10.2; 104.10.3). Fire official evacuation authority at an emergency has been clarified (101.11.4). Permit language has been modified extensively to clarify when permits are required and what procedures must be followed (105.1.1); some previously required permits were eliminated or limited in application (for example, permits were eliminated for residential heating oil tanks under 1,100 gallons and LP-gas containers under 500 pounds servicing R-3 occupancies, 105.1.1.1.2); a required annual permit for the storage, use, manufacture, processing or handling of ammonium nitrate was added (105.1.1.1.7); discretionary operational permits were added for beverage dispensing applications using more than 100 pounds of carbon dioxide (105.6.4) and for motor fuel-dispensing facilities (105.6.31); discretionary construction permits were added for emergency responder radio coverage systems (105.7.5) gates or barricades crossing fire apparatus access roads (105.7.9), smoke control or smoke exhaust systems (105.7.14), and solar photovoltaic power systems (105.7.15). Inspection, testing and maintenance record keeping requirements were clarified (107.3). Overcrowding violations were clarified (107.6). Enforcement procedures and relative terminology was extensively reorganized to add clarity regarding enforcement authority and to better align OFC enforcement provisions with the R.C., including the bifurcation of orders for highly hazardous occupancies into construction related orders (distinct hazards) and occupancy limiting orders (serious hazards) (109 and 110, generally). Language was modified to limit entities that can perform research and reports to determine product acceptability (115.1-115.2). Extensive changes were made to provisions regarding hotel and SRO facility licensure (deadlines for licensure renewal were reiterated (118.1.1), reporting requirements for specified nuisance activity were added in keeping with the R.C. (118.1.2); guest register information was clarified (118.3.5); certificate of occupancy content requirements were clarified (118.7.2.2.2-118.7.2.4.1); deadlines for the reporting of transfer and information changes were added as was a fee for information received after the deadline (118.7.2.5; 118.7.4.4); deadlines for the submission of renewal applications and a grace period were set, adding an additional fee for applications that are late, but still received during the grace period (118.7.4.2); prior 10% late fees "which were nominal and did not deter late applications" were eliminated; applications received after the deadline and grace period will be treated as new, meaning fees for original applications will be applied; a nominal duplicate license fee (\$10) was added (118.7.4.7); procedures for the removal or transfer of a licensed premises were modified (118.7.5.2-118.7.5.3); publication requirements for Operation Safe Stay hotels were modified (118.8.6). Provisions regarding award recipients for fire department grants were modified to include private fire companies (120.3). Language was added to authorize joint applications for grants (120.4). MARCS grant language was modified (120.6.1.1). Special provisions were added to address OFC applicability

to Type-A and B daycare facilities and to provide for a fire department registry and heroism awards (121.1-121.5). Hearing procedures were modified to clearly state that hearing officers do not have authority to rule on motions for a change of venue and to recognize ministerial acts as being exempt from hearing requirements (122.1.3; 122.6.4). Section 123, regarding material assistance/non-assistance to terrorist organizations, was deleted.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

It is infeasible for the SFM to file referenced material electronically due to copyright laws held by the relevant standards making associations.

Materials incorporated by reference in this rule are listed in O.A.C. 1301:7-7-80 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:

- i) 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. 1301:7-7-80 lists the incorporated material and contact information for each of the organizations that publish the listed incorporated material.
- ii) 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.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

The SFM is revising the instant rule to upload a correct rule draft and to provide clarification with regard to certain R.C. provisions referenced in the RSFA Part A.

The previously submitted draft was not properly formatted and contained an improper format/time-stamp designation. This has been corrected in the revised version.

Previously, the SFM listed R.C. Chapter 3743 as an authorizing statute for the instant rule rather than pinpointing specific authorizing sections. R.C. Chapter 3743 addresses fireworks provisions and many of the specific sections set forth duties and authority of the SFM with respect to inspections, permits, variances, and violations of relevant provisions, etc. This revised submission sets forth pinpointed sections of R.C. 3743 which authorize provisions contained in this rule.

In addition, with regard to R.C. provisions that the instant rule implements or amplifies, the SFM listed certain pinpointed citations as well as some general R.C. chapters. The instant revision is being submitted to offer explanations regarding why general chapter references were provided rather than specific code citations:

* R.C. Chapter 3731 address hotel and SRO facility definitions, SFM rule requirements, licensure requirements, sanitization requirements, fire alarm and system requirements, SFM inspection and enforcement authority, etc. These provisions are in large part mirrored in the instant rule and the provisions of R.C. Chapter 3731 in its entirety are amplified and implemented in this rule (primarily in section 118).

* R.C. Chapter 3737 sets forth the duties and responsibilities of the SFM. Because the instant rule provides the scoping and applicability provisions for the OFC, the rule speaks at least in some measure to those authorizing provisions contained throughout R.C. Chapter 3737. Therefore, rather than listing each section of the R.C. Chapter, the SFM highlighted the Chapter in total.

* R.C. Chapter 3743 was previously generally listed, rather than providing pinpointed citations, for much of the same reasons as provided above. However, this Chapter, which again addresses fireworks, is not as readily amplified here in Rule 1 because many of the provisions contained in the R.C. Chapter are more thoroughly amplified in new Rule 56. Therefore, the SFM revised the instant filing to provide pinpointed citations regarding the provisions implemented and amplified in this rule as set forth in R.C. Chapter 3743.

* R.C. Chapter 5104 was also listed in general as a provision that the instant rule implements and amplifies. R.C. Chapter 5104 sets forth licensing and inspection requirements for child day care providers and facilities. Pursuant to R.C. 3737.83 the SFM is required to set the minimum standards for fire safety for facilities licensed pursuant to R.C. Chapter 5104. The instant filing has been revised to set forth the specific, pinpointed R.C. provisions regarding SFM related standards and inspections. Finally, the instant revision is being submitted to clarify provisions contained in OAC 1301:7-7-01(R)(8)(j); OFC 118.8.10, which lists an effective date. OAC 1301:7-7-01(R)(8); OFC 118.8, generally, sets forth the requirements for the Operation Safe Stay initiative, which is a compliance based incentive program for hotel and SRO facilities. Pursuant to prior legislation the program came into existence in a prior rule revision. The effective date was included in the provisions at that time and is necessary to afford industry members notice of when the program would commence and when they could, through compliance with relevant provisions and requirements, begin establishing qualification for the program. The effective date is not new in the instant revision and does not retroactively make any substantive OFC provision applicable. Rather, it establishes a date for the implementation of the Operation Safe Stay program.

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will increase revenues.

Please see below.

Generally, the provisions in the proposed OFC will not significantly increase or decrease either the revenues or the expenditures for the SFM because the OFC creates a regulatory scheme that applies to entities throughout the state. However, Rule 1 contains licensure requirements for hotel and SRO facilities. Some proposed changes in these provisions will affect SFM revenues.

In addition, some previously required permits have been eliminated and, therefore, prior permitting fees and the costs of associated inspections will be eliminated. To reduce the risk of improperly handling ammonium nitrate and causing a catastrophic event (like the 2013 explosion in West, Texas that caused 15 deaths, numerous casualties and severe property damage), a mandatory annual permit for ammonium nitrate storage and handling has been added. Please see below for more detail.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Although changes were made throughout the rules contained in the OFC, the vast majority are not anticipated to have a cost impact. Many of the proposed rule modifications merely restructure prior rules or clarify prior OFC or R.C. requirements. The basic provisions of the OFC account for industry wide standards that have been in place for many years; the bulk of the provisions are not changing.

Changes made to the scoping provisions and enforcement procedures will not have a cost impact. For example, the SFM's inspection and permitting fees have not changed. These changes merely clarify already existing application and enforcement procedures. Record keeping requirements were amended to clarify retention times (107.3). However, the necessity to maintain installation, maintenance and test records are not new. There is no anticipated cost impact. Enforcement procedure language was merely reorganized and clarified to relay R.C. requirements (109 and 110, generally). Penalties and fines for non-compliance were not changed. Modifications to grant language is intended to benefit local communities by providing enhanced opportunities to receive grant funding for necessary emergency training and equipment (120.4; 120.6.1.1). Language in this rule that is anticipated to have a cost impact is as follows:

* Changes regarding the effect of building code occupancy approvals are designed to alleviate potential duplicative appeals, thereby providing a cost savings to regulated individuals (appellate fees are currently \$200) (102.3.4). The provisions clarify that if OBC provisions are appealed and the fire code official had an opportunity to be a part of the fire protection plan review process, the outcome of the OBC based appeal will determine the application of OFC provisions even if the OFC provisions were not also appealed. The necessity of an appeal regarding OFC provisions would be obviated.

* Some previously existing permits were eliminated, including those for LP-gas systems located on state property, standpipe systems located on state property, and for temporary membrane structures, tents and canopies (formerly 105.1.1.1.3 - 105.1.1.1.5). Likewise, exemptions to aboveground storage tank (AST) permitting requirements were added for residential heating oil tanks under 1,100 gallons, for AST's used at construction sites on a temporary basis, and for certain engine mounted tanks connected to stationary pieces of equipment that are less than 500 gallons and meet certain other criteria generally related to security (105.1.1.1.2). The elimination of these previously required permits will have a cost saving impact for consumers of roughly \$75 to \$100 per permit. (Permitting fees vary, but generally fall within this range.) Associated inspection fees (generally around \$100) will also be saved by the consumer. Affected individuals will be homeowners throughout the state, state facilities, the construction industry, numerous facilities that operate engine mounted tanks for back-up generator fueling, such as nursing homes and small medical facilities, and any consumer using a larger tent or membrane structure.

* Language has been added to require an annual operational permit for the storage, use, manufacture, processing or handling of ammonium nitrate when the aggregate quantity of product is in excess of 5,000 pounds (105.1.1.1.7). However, if the subject facility is already required to obtain a permit under other provisions of the OFC a separate permit for the ammonium nitrate will not be required. Likewise, if the ammonium nitrate is otherwise regulated by the Department of Transportation no permit will be required. It is estimated that there are approximately 10 facilities within the State of Ohio that will be affected by this permit requirement. The cost of the permit is estimated to be around \$75, plus inspections fees that will be around \$100. Currently, there are no permits in the state relative to ammonium nitrate. The new requirement will provide a mechanism to allow tracking of this highly volatile substance and its proper safe handling and storage. After the explosion of a fertilizer plant in West, Texas, the necessity of tracking how this product is handled was brought to the forefront.

* A discretionary operational permit was added for carbon dioxide systems used for beverage dispensing applications using more than 100 pounds of carbon dioxide (105.6.4). The necessity for the permit and the costs therefore will be determined by the local fire code official. Authority to require such permits was added to the OFC subsequent to issues at such installations across the country resulting in carbon dioxide poisoning related incidents that can arise when equipment is not properly

installed and maintained. A permitting process will provide local officials with the ability to ensure that equipment is being properly installed, used, and maintained. See also, Rule 9 analysis.

* A discretionary operational permit was added for motor fuel-dispensing facilities (105.6.31). The necessity for the permit and the costs therefore will be determined by the local fire code official. The permit was added to the OFC to allow local fire code officials to integrate permits for this hazardous activity into any other existing state fire code based permit programs they may have in their communities.

* Discretionary construction permits were added for the installation of and modification to emergency responder radio coverage systems (105.7.5), gates and barricades across fire apparatus access roads (105.7.9), LP-gas systems, Private fire hydrants, smoke control or smoke exhaust systems (105.7.14), and solar photovoltaic power systems (105.7.15). These permits were a part of the national model code update and generally have been instituted to allow fire code officials the opportunity to be involved in the installation of these systems so that any safety concerns can be discovered and addressed in a timely manner during construction rather than upon building completion or during an emergency event. Fees associated with the permits will be determined by the local fire code officials if they opt to implement a permitting program.

* Rules regarding hotel and SRO facility licensure fees were extensively amended. Initial licensure fees have not changed and range from \$2,000 to \$4,000 depending on the type of facility (118.7.4.1). Renewal fees have not changed and remain either \$110 or \$1 per room, whichever is greater (118.7.4.2). Previously, however, renewal applications could be submitted at any time and were subject only to a 10% late fee (or approximately \$10). This was not an effective deterrent to the submission of late applications and resulted in the operation of unlicensed facilities. Therefore, the SFM amended license renewal provisions to provide that any application received late (after December 31) (all hotel licenses expire on this date per R.C. sec. 3731.03) but prior to the expiration of a 'grace period' (the last day of February) will be assessed a \$300 reactivation fee in addition to the renewal fee (118.7.4.2). Applications received on or after March 1, will be treated as new and will have to pay appropriate fees for a new facility license (118.7.4.2). This will result in a potentially significant cost increase to licensees, but will only affect those licensees who do not comply with their licensure requirements (which are not changing). In the past, approximately 100 facilities (out of the 1,500 licensed hotels in Ohio) routinely failed to submit their renewal applications on time which resulted in their unlicensed operation and large departmental expenditures trying to obtain compliance. In the most recent licensure cycle, the SFM sent unresponsive applicants several 'renewal reminder notices' which did decrease the number of late applicants, but did not eliminate them. The number remained at approximately 35 late applicants. The prior \$10 late fee was not effective. Incidentally, license renewal applications trigger an inspection for compliance with

OFC provisions as a part of the annual licensure process. Failure to engage in the renewal process often results in facilities not being inspected as required.

* Hotel and SRO license transfer fees have not changed (\$500) (118.7.4.4). However, like with licensure, deadlines for the submittal of transfer information have been established as well as a fee for late submittal (\$200 late fee in addition to the transfer fee) (118.7.2.5; 118.7.4.4). Out of the 1,500 licensed hotels, this fee will affect approximately 20 facilities annually who fail to submit their information as required.

* A \$10 duplicate license fee has been added to the OFC (118.7.4.7). This fee is nominal and is designed to cover administrative costs associated with producing and mailing a duplicate license to a facility that has lost or damaged their license, or in the case where the license has been sent to corporate offices based on the hotel's request in their application rather than to the specific location. This is a common occurrence and the number of affected licensees cannot be readily determined.

The above hotel and SRO facility licensing fees and deadlines will not go into effect until the licensing year of 2019. These changes were discussed with hotel industry members and stakeholder groups during the Comment Period and received widespread support.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **Does this rule have an adverse impact on business?** Yes
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** Yes

Pursuant to R.C. requirements, some provisions of this rule address licensure requirements for hotel and SRO facilities. The licensure requirements are located in R.C. 3731.03(B) and in OFC sections 118.1, 118.7.1.

In addition, some mandatory permits are required in this rule. Permits are required for the manufacture, processing and storage of explosives (105.1.1.1) (see also OFC sec. 5610 and sec. 5617.1), the installation, alteration, removal, abandonment, or placement out of service of an above ground storage tank (101.1.1.1.2), for fireworks exhibitions (105.1.1.1.6), and for the storage, use, manufacture, processing or handling of ammonium nitrate (105.1.1.1.7). Discretionary permits for other activities are also provided for in sections 105.6 and 105.7).

- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

The OFC contains general civil penalties for violations of the OFC (see sec. 109) as specified in R.C. 3737.51(B)-(F); additionally, pursuant to R.C. sec. 3737.51(A), there is a criminal penalty for knowingly violating any provision of the OFC.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

Fire departments are required to report fire investigations and to report certain fire incident related information to the State Fire Marshal (R.C. 3737.23-3734.24; OFC 104.6.3.1).