

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-7-03

Rule Type: New

Rule Title/Tagline: General Requirements.

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?** 3737.65, 3737.22, 3737.82, 3737.83
5. **What statute(s) does the rule implement or amplify?** 3737.83, 3737.22, 3737.65, 3737.82
6. **What are the reasons for proposing the rule?**

The State Fire Marshal is filing rule errata items to correct non-substantive editorial and grammatical errors in the recently enacted 2017 Ohio Fire Code, to correct errors that occurred during the filing process of the 2017 Ohio Fire Code, and to make revisions to rules regarding mobile food units, as set forth in OFC section 320, in response to stakeholder and industry input and petition.

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

This rule governs the occupancy and maintenance of all structures and premises for precautions against fire and the spread of fire and general requirements for fire safety. Regulations regarding 'mobile food units' were new to the 2017 OFC and are located at Section 320. Substantive changes are being made to the mobile food unit rules pursuant to input and feedback received by the SFM after the publication of the 2017 OFC. Input was received from mobile food unit operators and related associations, restaurant and hotel industry representatives, and members of both Columbus and Cleveland Divisions of Fire. The changes provide relief to the industry with regard to some of the regulations that were adopted and will more closely align the rules with industry standards and best practices. See specifically the following sections: 320.2.3 (edit language to clarify that carbon monoxide detectors are not required if no fossil fuel powered equipment is present); 320.3 (add exception to portable fire extinguisher requirements for open air hand carts); 320.3.1 (delete reference to 'solid fuels' for which the use of a Class K fire extinguisher is not appropriate); 320.4 (clarify that 2 forms of egress must be accessible while the unit is in operation and not necessarily at all times); 320.6.1 (allow for the use of DOTn containers, which are more prevalently used in the industry); 320.6.2(i) (delete unnecessary and confusing verbiage with regard to supply system placement); 320.6.2(ii)-(iii) (insert language to clarify that containers can be removed during operation and must be secured with non-combustible materials; decrease clearance distance from 36" to 30" and clarify that the clearance requirement only applies to rear mounted tanks, thereby allowing for the placement of tanks at other locations on the unit where a 36" clearance would not be possible or necessary, such as a trailer mount); 320.6.3 (eliminate retroactive language/applicability regarding piping requirements; insert reference standard for flexible connectors; eliminate certain regulations regarding piping and connector requirements); 320.7 (decrease separation distance for unit operation in relation to other vehicles and units; delete exception); and 320.9 (delete exposed conduit requirement and reorganize section).

Other changes to this rule are being made to correct changes proposed during the 2017 OFC update but inadvertently omitted during the filing process. These include the following sections: 311.2.1.1 (delete old/insert new language consistent with Ohio Revised Code (R.C.) changes made regarding expedited foreclosures); 320.3 (add exception to fire extinguisher requirements for open air hand carts); 320.6.2(ii) (change "container" to "containers"; add language regarding the use of non-combustible materials to secure gas containers); 320.6.2(ii)(h) (add language regarding the use of non-combustible materials to secure gas containers); and 320.6.3(v) (add language regarding flexible connectors). All of this language was proposed to stakeholders during the 2017 OFC update.

In addition, non-substantive, grammatical and/or formatting changes are being made at sections: 301.2 (delete "of" between "in" and "rule"); 308.1.4.1 (correct rule reference); 308.3.2 (correct rule reference); 311.6 (correct section number); 312.3

(correct citation); 320.2.1 (change "unit" to "units"); 320.3.1 (correct citations (2)); and 320.6 (correct rule references (4)).

- 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 OFC are listed in Ohio Administrative Code (OAC) section 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) via the following:

i) All referenced text and 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 the referenced 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.**

Not Applicable

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 have no impact on revenues or expenditures.

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Not applicable.

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

Language in section 320 was new language in the 2017 OFC update and instituted basic fire safety measures for mobile food units in response to a submitted petition and to get ahead of this emerging industry that has the potential for catastrophic results if unsafe operation occurs. While the SFM limited in scope the provisions that were enacted, the SFM has been approached by fire safety officials and industry members to make additional amendments to the rules. Based on their input, the SFM is now relaxing some of the previously enacted provisions. The changes proposed herein will allow the use of additional LP-gas containers to now include those most generally used in the industry (see section 320.6.1), will eliminate the need for portable fire extinguishers for certain units where such equipment is not warranted (see section 320.3), and will eliminate prior retroactivity provisions with regard to piping systems (see section 320.6.3). In addition, some piping requirements are being eliminated and provisions requiring electrical wiring to be contained in exposed conduit are being eliminated (see sections 320.6.3(viii)- (xiii) and 320.9, respectively). All of these changes will result in a cost savings to unit owners when configuring the layout of their vehicles and / or will eliminate the need for costly upgrades. Finally, separation requirements with regard to the proximity of one mobile food unit to another are being lessened (see section 320.7). This will allow more vendors to participate in events like fairs and festivals (because with lesser required separation more units can fit in the space allotted for the event) and will result in increased business for unit owners if they choose to participate in a particular event rather than being precluded from participation due solely to space restrictions.

Section 311.2.1.1 is being amended to add language that was proposed in the 2017 OFC update but that was inadvertently omitted during filing. The change is in accordance with legislative changes to boarding requirements for vacant structures contained in the R.C.). To the extent that the OFC will require boarding, no cost impact is anticipated because such is already required in the R.C. To the extent that the OFC will require a 'quick release device" when and if such a device is available, minimal cost impact is anticipated and will be voluntary for the user since the user will have the option to board with material that does not have the device. Further, the boarding and quick release device provisions only affect those vacant structures that are subject to an expedited foreclosure process under the cited R.C. provisions; these requirements do not affect the vast majority of structures. If an affected user does opt to use a boarding material for which a quick release device is available, devices can range in price from \$10 to \$50 each.

Other proposed changes to the mobile food unit rules and other provisions of Rule 3 are non-substantive in nature and correct grammatical, formatting or citation errors

or are being made to clarify already existing requirements or procedures. There is no anticipated cost impact for these changes.

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

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 rules contain general civil penalties for violations of the Ohio Fire Code as specified in R.C. 3737.51(B)-(F); additionally, pursuant to the Ohio Revised Code sec. 3737.51(A) there is a criminal penalty for knowingly violating any provision of the Ohio Fire Code.

C. **Does this rule require specific expenditures or the report of information as a condition of compliance? No**

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Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	No
B. County Government	Yes
C. Township Government	Yes
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

Counties, townships and municipal corporations will be affected to the extent that fire service members will need to be educated regarding the new rules and will generally have to determine whether to obtain new code book errata packages for their staff. The code changes will also be available on-line, at no cost, through Lawriter and the SFM website. However, if jurisdictions opt to purchase hard copy errata publications, the cost will be established by the publishing company. It is not known how much the publisher may charge for this service, but purchase of a hard-copy publication of the entire printed Ohio Fire Code ranges from \$75 to \$125 depending on membership status. Of course, each jurisdiction will have to determine the quantity that will be purchased.

3. Is this rule the result of a federal government requirement? No

A. If yes, does this rule do more than the federal government requires? *Not Applicable*

B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?

Not Applicable

4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:

A. Personnel Costs

Not applicable.

B. New Equipment or Other Capital Costs

Not applicable.

C. Operating Costs

Not applicable.

D. Any Indirect Central Service Costs

Not applicable.

E. Other Costs

Please see above.

5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.

See above. There are no mandated costs associated with this rule. Any textbooks or training that an entity engages in would be elective. Free on-line texts are available and free on-line train is available.

6. What will be the impact on economic development, if any, as the result of this rule?

This rule does not impact economic development.