

Michigan Association of Fire Chiefs

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This is a review of Public Act 291 and the DRAFT Administrative Rules of January 23, 2020, for areas of conflict and/or issues noted by the Michigan Association of Fire Chiefs.

Public Act 291

23.369 State fire marshal; preparation and publication of rules establishing minimum standards; duties; certification examination requirements; waiver; validity of certification; certificate as property of the state fire marshal; review and monitoring of state and federal standards relating to live-fire training exercises.

Section of Law	Rules
<p>Section 9 (1) The state fire marshal, with the approval of a majority of the council, shall prepare and publish rules that establish minimum standards for certification as a fire service member. The standards established under this section must comply with the Michigan occupational safety and health administration general industry safety standard, R 408.17411 of the Michigan Administrative Code. To maintain compliance with the Michigan occupational safety and health administration general industry safety standard, R 408.17411 of the Michigan Administrative Code, the employer of a fire service member shall provide initial and continued training to the member commensurate with and specific to the duties that the member is expected to perform. The training described in this section must be provided before the member is permitted to perform emergency operations.</p>	<p>R 29.418 Initial and Continuing Education Rules 18 (1) through (8)</p>

Michigan Association of Fire Chiefs Response/Recommendation

Within the proposed Fire Fighters Training Council General Rules, the initial training shall be in accordance with MI-OSHA R408.17411 and is the duty of the employer to ensure that training is provided **commensurate to the duties expected to perform**. In the rules, it states that a Fire Chief and Public Safety Director must be a firefighter II. Their job may not have any operational component and may never be on a scene, their job may strictly be administrative, budgets, policy, politics, etc. If for some chance the individual did end up in operational command of a fire scene and something happens; who is the enforcement agency? (MI-OSHA) Who is the enforcement agency for determining training commensurate to the duties expected to perform? MI-OSHA It is our opinion that we should consult and collaborate with MI-OSHA

to determine what is required as far as training commensurate with and to the duties expected to perform based on MIOSHA Standards the MFFTC should create programs, testing and certifications meeting those requirements enforced by MIOSHA.

Within the proposed Fire Fighters Training Council General Rules, and as the law states, the continuing education requirements should be in concordance with what is required within MIOSHA Part 74. When looking at the continuing education required within MIOSHA Part 74, there is no requirement on how many hours per year, or a 3-year cycle, that a fire service member is required to obtain to meet state requirements. This creates a scenario where the requirements of the new rules may not be adequate to satisfy compliance with MIOSHA. While we believe continuing education is an important component, the Michigan Association of Fire Chiefs recommends that the Michigan Fire Fighters Training Council work with MIOSHA to set acceptable criteria for continuing education needed for each fire service discipline.

Section of Law	Rules
<p>Section 9 (2) (b) Develop and administer certification examinations, testing procedures, and reciprocity recognition for credentialing in the various fire service disciplines recognized under this act. The requirements for each fire service discipline must meet the respective professional qualifications in the current and appropriate National Fire Protection Association standard.</p>	<p>R 29.405 Classifications These subsections below speak to reciprocity. Rule 5: 29.405 (9); Rule 5a: 29.405a (4); Rule 5b: 29.405b (c); Rule 5c: 29.405c (10); Rule 5d: 29.405d (8); Rule 5e: 29.405e (7); Rule 5g: 29.405g (5); Rule 5h: 29.405h (4) Rule 5i: 29.405i (4) Rule 5j: 29.405j (4) Rule 5K: 29.405k (5) Rule 5m: 29.405m (4) Rule 5n: 29.405n (2) Rule 5o: 29.405o (5) Rule 5p: 29.405p (2) Rule 5q: 29.405q (3)</p>

Michigan Association of Fire Chiefs Response/Recommendation

Public Act 291 states that we use the applicable NFPA Standard as the benchmark for certification. As such, the Michigan Association of Fire Chiefs recommends qualifying reciprocity with the applicable National Fire Protection Association Standard and its Job Performance Requirements (JPR's) at the time of certification by either the NFPA and/or through a nationally recognized accrediting body that certifies the same. For instance, the In-State Reciprocity Criteria could be:

- "Are you in compliance with Michigan's rules related to the expiration of

certifications due to separation from service?"

- o Answering "Yes" to this question ensures the individual's certificates are eligible to be evaluated further.

- "Did you get certified in compliance with the applicable National Fire Protection Association Standard at the time of your certification by the NFPA and/or through a recognized accrediting body that certifies the same?"

- o Answering "Yes" to this question ensures the individual is trained commensurate with the Standard that we hold all Michigan Firefighters to.

- "There were State of Michigan Continuing Education Requirements for this certification; have you met or exceeded those requirements until the current date?"

- o Answering "Yes" to this question ensures the individual has maintained their training commensurate with the conditions of their Certification.

Section of Law	Rules
<p>Section 9 (2) (b) Develop and administer certification examinations, testing procedures, and reciprocity recognition for credentialing in the various fire service disciplines recognized under this act. The requirements for each fire service discipline must meet the respective professional qualifications in the current and appropriate National Fire Protection Association standard.</p> <p>29.369 (2) (d) Develop and administer certification examinations that include a practical demonstration and a written or oral test to determine a person's competency in regard to the knowledge and skill requirements in the current edition of the National Fire Protection Association standards for each of the fire service disciplines recognized under this act. The state fire marshal, or his or her designee, shall, upon request, administer the examination in each county of this state not less than once annually. The examination may be administered in 2 parts. If the examination is administered in 2 parts, part 1 of the examination must test the knowledge and skill requirements set forth in the standards for</p>	<p>R 29.405 Classifications These subsections below speak to the various fire service certification levels</p> <p>Rule 5: 29.405 Rule 5a: 29.405a Rule 5b: 29.405b Rule 5c: 29.405c Rule 5d: 29.405d Rule 5e: 29.405e Rule 5f: 29.405f Rule 5g: 29.405g Rule 5h: 29.405h Rule 5i: 29.405i Rule 5j: 29.405j Rule 5K: 29.405k Rule 5l: 29.405l Rule 5m: 29.405m Rule 5n: 29.405n Rule 5o: 29.405o Rule 5p: 29.405p Rule 5q: 29.405q</p>

firefighter I in the current edition of the standards for Fire Fighter Professional Qualifications, National Fire Protection Association standard no. 1001, and part 2 of the examination must test the knowledge and skill requirements set forth in the standards for firefighter II in the current edition of the standards for Fire Fighter Professional Qualifications, National Fire Protection Association standard no. 1001. The examination may also be administered as a combined firefighter I and firefighter II examination if a combined examination is requested by a county training committee or regional training center

29.369 (3) A person who is hired or appointed as a full-time or part-time firefighter shall pass both part 1 and part 2 of the certification examination described in subsection (2)(d) not more than 12 months after he or she is hired or appointed as a full-time or part-time firefighter to be eligible to continue his or her employment or appointment as a full-time or part-time firefighter.

29.369 (4) A person who is hired or appointed as a volunteer or paid-on-call firefighter shall pass part 1 of the certification examination described in subsection (2)(d) not more than 24 months after he or she is hired or appointed as a volunteer or paid-on-call firefighter to be eligible to continue his or her employment or appointment as a volunteer or paid-on-call firefighter, as applicable.

Michigan Association of Fire Chiefs Response/Recommendation

The law appears to be in direct conflict with the rules, as the rules are requiring a person to attend a class. There isn't any place in the document that requires attendance at training, just that a person meets the requirements through certification testing. All disciplines speak to attending an approved course. When you read the excerpts of the law below, it doesn't speak to attending a course. Must pass certification examinations, not attend a course, if an individual passes a written and practical certification examination that measures the requisite skills and knowledge identified in each respective NFPA professional qualifications standard, then an

individual has met the law.

The only Certification that is required by the law is Firefighter; all other certifications are optional based on the law. MIOSHA would be the agency that would dictate what certification level is required depending on the duties that an individual is expected to perform. The rules should not mandate levels of training. The law is giving the State Fire Marshal and council the ability to certify to these levels, not require training or certifications.

There isn't any place in the NFPA standards that requires an individual to attend a certain number of hours in a class or course, just that they meet the requisite knowledge and skills which is demonstrated when an individual takes a cognitive and performance exam.

No National Fire Protection Association standard exists that addresses the Fire Chief or Public Safety Director. The level of certification for a Fire Chief or Public Safety Director would again be dictated by MIOSHA and the AHJ commensurate to the duties that individual is expected to perform. The law states that the requirements for each fire service discipline must meet the respective professional qualifications in the current and appropriate National Fire Protection Association standard; therefore the reference to Fire Chief and Public Safety Director in regards to a population based number and required training should be removed.

Section of Law	Rules
<p>Section 9 (7) Except as otherwise provided in this subsection, the state fire marshal shall waive the examination requirements under this section and extend reciprocity certification to a person from another state who seeks to become employed or volunteer in the fire service in this state if the person was certified in the other state after successfully completing a program that meets or exceeds the National Fire Protection Association standards for the applicable fire service discipline recognized under this act. The state fire marshal shall not waive the certification examination for a person who was certified in another state if either of the following applies: (a) The person's out-of-state certification was revoked by that state or another issuing organization. (b) The person has been convicted of a felony under the laws of this state, another state, or the United States.</p>	<p>R 29.405 Classifications These subsections below speak to reciprocity. Rule 5: 29.405 (9); Rule 5a: 29.405a (4); Rule 5b: 29.405b (c); Rule 5c: 29.405c (10); Rule 5d: 29.405d (8); Rule 5e: 29.405e (7); Rule 5g: 29.405g (5); Rule 5h: 29.405h (4) Rule 5i: 29.405i (4) Rule 5j: 29.405j (4) Rule 5K: 29.405k (5) Rule 5m: 29.405m (4) Rule 5n: 29.405n (2) Rule 5o: 29.405o (5) Rule 5p: 29.405p (2) Rule 5q: 29.405q (3)</p>

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29.371a Disciplinary process; rules

Section of Law	Rules
<p>Sec. 11a. The fire marshal, with the approval of the council, shall promulgate rules establishing a disciplinary process for the suspension or revocation of certification and any necessary retraining requirements to maintain or restore certification after a suspension or revocation for a fire service member for 1 or more of the following:</p> <ul style="list-style-type: none"> (a) Conviction of a felony. (b) Making a materially false statement, causing a materially false statement to be made, or otherwise committing fraud during the application for the certification process. (c) Violating council and fire marshal-adopted policies regarding a fire service member's use of the fire marshal's training information network because the fire service member wrongfully disclosed exam information from the fire marshal's information network. 	<p>Rule 10a. (1) Pursuant to section 11a of the act, MCL 29.371a, the state fire marshal shall initiate the disciplinary process, which may include suspension or revocation of 1 or more classification certifications issued to an individual for any of the following reasons:</p> <ul style="list-style-type: none"> (a) Having been convicted of a felony in any state of the United States (b) Making a materially false statement (c) Causing a materially false statement to be made (d) Committing Fraud when applying for any classification certification (e) Wrongfully disclosing in any format, such as electronically, verbally, or in writing, any information about an examination that the bureau uses in the examination certification process. (f) Violating the act or the bureau's rules, policies, directives or bulletins. (g) Violating the annual instructor memorandum of understanding (MOU). (h) Violating the 3-year continuing education compliance requirements.

Michigan Association of Fire Chiefs Response/Recommendation

In the proposed general rules, Rule 10a (1) (e), (f) & (g) speak to reasons that the state fire marshal can initiate a disciplinary process against a fire service member. These reasons do not coincide with what is written within Public Act 291. PA 291 gives three very specific reasons as to what can initiate a disciplinary process. However, "(e) wrongfully disclosing in any format, such as electronically, verbally, or in writing, any information about an examination that the bureau uses in the examination process", "(f) violating the act or the bureau's rules, policies, directives or bulletins" or "(g) violating the annual instructor memorandum of understanding (MOU)" do not appear to be consistent with the Law.

29.369 (8) Certification as a fire service member granted to a person under this act is valid unless or until the council revokes the certification as part of disciplinary action. This section of the law is very specific; the State Fire Marshal doesn't revoke certifications, only the council.