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MINNESOTA DEPARTMENT OF  
**LABOR & INDUSTRY**

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March 8, 2007

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendment to Rules Governing Minnesota Provisions of Special Fire Protection Systems (Optional), *Minnesota Rules*, Chapter 1306; OAH Docket No. 3-1900-17877-1; Governor's Tracking No. AR 147

Dear Librarian:

The Minnesota Department of Labor and Industry intends to adopt rules governing elevators and related devices. We plan to publish a Dual Notice: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received in the March 12, 2007 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at (651) 284-5128.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Patricia Munkel-Olson'. The signature is stylized and cursive.

Patricia Munkel-Olson  
Construction Codes and Licensing Attorney

Enclosure: Statement of Need and Reasonableness

## **Minnesota Department of Labor and Industry**

### **Construction Codes and Licensing Division**

#### **STATEMENT OF NEED AND REASONABLENESS**

##### **Proposed Amendment to Rules Governing Special Fire Protection Systems (Optional), Minnesota Rules, Chapter 1306.**

#### **INTRODUCTION**

The Department proposes to update the Minnesota State Building Code, by amending Chapter 1306, to specifically except particular structures from the sprinklering requirements of this chapter, and to provide flexibility in the methods a municipality may use to inform the Department's Construction Codes and Licensing Division of its adoption of these rules.

The Department's Construction Codes and Licensing Division facilitated an advisory committee on the proposed rules that included the Deputy State Fire Marshal, a Minnesota Fire Marshal and Fire Chief, certified building officials designated by municipalities to administer and enforce the State Building Code, department representatives, and representatives from the League of Minnesota Cities, the Building Owners and Managers Association, the Builders Association of the Twin Cities, the Multi-family Housing Association, the Minnesota Mechanical Contractors Association, and Gilbert Mechanical. All members of the committee contributed to the content of the proposed rule and consensus was reached on all items.

#### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Carrie Rohling at the Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, e-mail at [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us), telephone (651) 284-5217, or fax (651) 284-5725. TTY users may call (651) 297-4198.

#### **STATUTORY AUTHORITY**

The Department's statutory authority to adopt the rules is set forth in Minnesota Statutes sections 16B.59, 16B.61, and 16B.64.<sup>1</sup>

Minnesota Statutes, section 16B.59 states in pertinent part,

[T]he State Building Code governs the construction, reconstruction, alteration, and repair of buildings and other structures to which the code is applicable. The commissioner shall administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety,

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<sup>1</sup> All sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125, does not apply. See Minnesota Laws 1995, chapter 233, article 2, section 58.

welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

Minnesota Statutes, section 16B.61, subdivision 1, states in part,

[T]he commissioner shall by rule establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety, including design and construction standards regarding heat loss control, illumination, and climate control. The code must also include duties and responsibilities for code administration, including procedures for administrative action, penalties, and suspension and revocation of certification. The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States, including a code for building conservation. In the preparation of the code, consideration must be given to the existing statewide specialty codes presently in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference. The code must be based on the application of scientific principles, approved tests, and professional judgment. To the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or materials. To that end the code must encourage the use of new methods and new materials. Except as otherwise provided in sections 16B.59 to 16B.75, the commissioner shall administer and enforce the provisions of those sections...

Minnesota Statutes, section 16B.64, subdivision 6 states, "The commissioner shall approve any proposed amendments deemed by the commissioner to be reasonable in conformity with the policy and purpose of the code and justified under the particular circumstances involved. Upon adoption, a copy of each amendment must be distributed to the governing bodies of all affected municipalities."

Pursuant to the *Department of Administration Reorganization Order No. 193*, dated April 4, 2005, the responsibilities of the Department of Administration in relation to State Building Codes and Standards as set forth in Minnesota Statutes, sections 16B.59 through 16B.76 (2004) were transferred to the Department of Labor and Industry.<sup>2</sup>

Pursuant to these statutes and the reorganization order, the Department of Labor and Industry has the authority to adopt these proposed rules.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out six factors for a regulatory analysis that must

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<sup>2</sup> Reorganization Order No. 193 was effective upon filing with the Secretary of State on May 16, 2005, and shall remain in effect until amended, repealed, or superseded. For a copy of the reorganization order, please contact Carrie Rohling by e-mail at [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us), or phone to (651) 284-5217.

be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the agency's response.

**(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:**

The classes of persons who will probably be affected by the proposed rule include: certified building officials and inspectors who must be familiar with the rules to administer and enforce the State Building Code; commercial and residential building contractors who must comply with provisions pertaining to new construction and remodeling; architects and professional engineers who must apply the rules as they design new and remodeled buildings and structures; and the general public, who live, work, shop, and conduct business in those buildings or structures.

The proposed rule creates exceptions to the sprinklering requirements for particular types of structures that were inadvertently included in the current rule, which results in a decrease in costs because these particular structures will no longer require sprinklering. Additionally, the proposed rule provides flexibility to the municipality in the method it uses to submit a signed copy of the ordinance adopting the rule to the Division. As a result of these modifications, the Department does not anticipate that there will be any costs of the proposed rule to bear.

Those who will benefit from the proposed rule include certified building officials and inspectors that administer and enforce the State Building Code; contractors, installers, and design professionals, building owners and managers; and the general public that live, work, and conduct business in the buildings and structures constructed under these rules.

**(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:**

There are no anticipated probable costs to this agency or any other agency in the implementation and enforcement of the proposed rule. In addition, there is no anticipated effect on state revenues.

**(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:**

There are no less costly or less intrusive methods for achieving the purpose of this proposed rule.

**(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:**

The Department did not consider any alternative methods for achieving the purpose of the proposed rule.

**(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:**

The Department believes that there will be a reduction in the cost of complying with the sprinklering requirements of this chapter as a result of the proposed rule. Additionally, the Department believes that municipalities will also see a reduction of cost associated with the submission of a signed copy of the ordinance adopting this chapter because of the various methods with which the ordinance may be submitted to the Division.

**(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals:**

A consequence of not adopting the proposed rule is that developers, builders, and other professionals that design the particular structures that were inadvertently included in the current rule will be required to comply with the requirements of this chapter even though those particular structures were not intended to require sprinklering.

Another consequence of not adopting the proposed rule will result in the Division's inability to accurately disclose where the provisions of this administrative rule chapter are administered and enforced within the State, and continued difficulty for developers and builders who must comply with these rules without knowing which jurisdictions have adopted these rules.

**(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference:**

The Department is unaware of any federal regulations that are applicable to the proposed rules.

## **PERFORMANCE-BASED RULES**

Minnesota Statutes, section 16B.59 directs the Commissioner to, in part, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques. Section 16B.61 authorizes the Department to establish a code of standards governing, in part, matters of fire protection. This long-standing rule chapter provides a performance option to those municipalities that choose, through its adoption process, to administer and enforce this chapter of the State Building Code, which is about fire protection systems and does not in itself have performance provisions. The Department believes that the proposed rules meets the regulatory objective of the agency and provides maximum flexibility to regulated parties by providing municipalities and building owners with flexibility in determining fire suppression systems for the structures their municipal fire department is charged with protecting.

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## **ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a February 28, 2007 letter by Administrative Law Judge Sheehy.

We will mail or email the proposed rules and Dual Notice of Intent to Adopt Rules to interested parties. Those parties include:

- a. All certified building officials. This includes all municipal building officials that are responsible for the administration of the State Building Code;
- b. the Metropolitan Council;
- c. Minnesota Electrical Association;
- d. National Electrical Contractors Association;
- e. North Central Electrical League;
- f. American Society of Plumbing Engineers;
- g. American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.;
- h. Building Owners and Managers Association;
- i. Association of Minnesota Counties;
- j. Minnesota Association of Townships;
- k. League of Minnesota Cities;
- l. American Institute of Architects – Minnesota;
- m. Minnesota Pipe Trades Association;
- n. Builders Association of Minnesota;
- o. Builders Association of the Twin Cities;
- p. Minnesota State Fire Chiefs Association;
- q. Minnesota Mechanical Contractors' Association;
- r. Minnesota Plumbing, Heating, and Cooling Contractors Association;
- s. American Society of Civil Engineers – Minnesota;
- t. American Council of Engineering Companies of Minnesota;
- u. Minnesota Utility Contractors Association; and
- v. the State Fire Marshal Division.

Our notice plan also includes giving notice as required by statute. We will mail the Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing lists pertaining to all rulemaking related to construction codes, the adoption of the International Building Code, the adoption of the International Residential Code, and the Fire Code under Minnesota Statutes, section 14.14, subdivision 1a. Those persons include:

- a. Cities, townships, and counties;
- b. Colleges and universities;
- c. Architectural and professional engineering firms; and
- d. the Association of Minnesota Building Officials.

Chief Administrative Law Judge Raymond R. Krause, Office of Administrative Hearings, waived the publication of the proposed rules in the *State Register* by letter dated August 15, 2006. However, we will publish the proposed rules, the Statement of Need and Reasonableness,

and Dual Notice on the Department's website, which is located at [http://www.doli.state.mn.us/rulemaking\\_activity.html](http://www.doli.state.mn.us/rulemaking_activity.html).

We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

## **CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. We did this by sending Keith Bogut, Executive Budget Officer at the Department of Finance, copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. We sent the copies on January 24, 2007. The documents included: the Governor's Office Proposed Rule and SONAR Form; almost final draft rules; and almost final SONAR. Mr. Bogut sent a memorandum dated February 2, 2007, which included the following comments:

"On behalf of the Commissioner of Finance, I have reviewed the proposed rule and related Statement of Need and Reasonableness to explore the potential impact these changes may have on local governments. In my opinion, the proposed changes will not impose a significant cost on local governments."

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules will exceed \$25,000 for any small business with less than 50 full-time employees<sup>3</sup> or any statutory or home rule charter that has less than 10 full-time employees<sup>4</sup> in the first year after the rules take effect. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city because the proposed rules do not require any modification to existing structures. The proposed rules only affect new construction and remodeling when a municipality has adopted this chapter. Any small city or small business contemplating new construction or remodeling will decide whether and when the new construction or remodeling will occur. Because no new construction or remodeling is required by the proposed rules, no new construction or remodeling needs to be undertaken during the first year after the rules take effect.

## **LIST OF WITNESSES**

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Department of Department of Labor and Industry's Construction Codes and Licensing Division staff, and

<sup>3</sup> Hereinafter referred to as a "small business."

<sup>4</sup> Hereinafter referred to as a "small city."

2. Advisory Committee members.

## **RULE-BY-RULE ANALYSIS**

### **1306.0030 REQUIREMENTS.**

The current rule is based on language from the 2000 International Building Code, which designates the use of buildings by occupancy classification. The occupancy classifications that were adopted inadvertently required structures that had not previously been within the scope of the rule to install fire sprinkler systems. The proposed rule adds exceptions to correct the inadvertent inclusion of the types of buildings in the occupancy classifications that should have been excluded in the previous adoption of the rule.

The proposed rule adds an exception to item A, which refers to assembly occupancies, by excluding air inflated structures and open picnic shelters because these structures were not intended to be included in the current rule.

The proposed rule adds an exception to item B, which refers to storage occupancies, by excluding S-2 open parking garages, aircraft hangers, salt storage sheds, and group M detached canopies<sup>5</sup> because these structures were not intended to be included in the current rule.

### **1306.0070 REPORTING.**

The proposed rule properly names the Department of Labor and Industry to coordinate the rules with Reorganization Order No. 193, which transferred the responsibilities of the Department of Administration, in relation to the Building Codes and Standards Division, to the Department.<sup>6</sup> Reference to the Construction Codes and Licensing Division was also added to clearly identify the appropriate division of the department.

This rule part currently requires municipalities to submit a copy of the ordinance adopting administrative rule chapter 1306 within 15 days of its adoption by the municipality. The proposed rule modifies this requirement by stating that the ordinance is not effective until the Construction Codes and Licensing Division of the Department of Labor and Industry has received a signed electronic, faxed, or paper copy of the ordinance, and the division has approved the ordinance. This modification is necessary because municipalities are not reporting their adoption of this chapter as is currently required. This failure to report by some municipalities has created difficulty in determining where in the State this chapter is administered and enforced. This difficulty affects the developers and builders who are required to comply with these building code requirements. The division is also affected as it has been unable to accurately inform the public where these provisions are applicable.

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<sup>5</sup> For example: detached canopies located at a convenience store or gas station.

<sup>6</sup> For further discussion of Reorganization Order No. 193, see page 2.



**CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

February 28, 2007  
Date

/s/M. Scott Brener  
M. Scott Brener  
Commissioner