

2-2-2007

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February 1, 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 the Administration of the State Building Code, *Minnesota Rules*, Chapter 1300; OAH Docket No. 7-1900-17813-1; Governor's Tracking No. AR 144

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 February 5, 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 cursive script, appearing to read 'P. Munkel-Olson'.

Patricia Munkel-Olson  
Construction Codes and Licensing Attorney

Enclosure: Statement of Need and Reasonableness

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

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

#### **Proposed Amendment to Rules Governing the Administration of the State Building Code, Minnesota Rules, chapter 1300.**

### **INTRODUCTION**

The Commissioner of the Department of Labor and Industry proposes to adopt amendments to the administrative chapter of the Minnesota State Building Code, which is located in Minnesota Rules, chapter 1300.

The Minnesota State Building Code (the "MSBC") is comprised of several administrative rule chapters, which adopt various national model codes by reference, with amendments. Although each national model code has an administrative chapter, Minnesota has adopted Minnesota Rules, Chapter 1300 as the administrative chapter for the MSBC. This chapter replaces the administrative chapters found in the national model codes. Currently, the Department is actively engaged in updating several chapters of the MSBC by adopting the most current versions of the national model codes that have already been adopted, with amendments where necessary. As a result, the rules governing the administration of the State Building Code require updating as well.

### **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, Third Floor, 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**

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.

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

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, 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>1</sup>

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

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<sup>1</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.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the Department'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: municipal building officials and inspectors who must be familiar with the rules to administer and enforce the MSBC; 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; building material suppliers who must incorporate the rules into the manufacture and assembly of their product(s); and the general public, who live, work, shop, and conduct business in those buildings or structures.

The classes of persons that will bear the costs of the proposed rule include municipal building officials and other government entities that are responsible for administering and enforcing compliance with the MSBC. However, costs associated with complying with the proposed rule are likely to be passed on the building owner.

The classes of persons that will benefit from the proposed rule include building officials and inspectors that administer and enforce the MSBC; contractors, installers, and design professionals; building owners and managers; and the general public that live, work, shop, 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:**

The probable costs to the agency of implementing and enforcing the proposed rule include providing a copy of the final rule to all jurisdictions that administer and enforce the MSBC as required by Minn. Stat. § 16B.64, subdivision 6. Once the Department adopts these rules, we may also need to provide updates or minimal training about the amendments to code officials and the industry. The Department anticipates providing updates or training by mailing or emailing an update or including a segment of education related to the administration of the Code within a larger training program targeted to those persons required to comply with the rules.

The probable costs to other agencies for implementation and enforcement of the proposed rule are minimal because the fees established by these agencies must be proportionate to the actual cost of the service for which the fee is paid.<sup>2</sup>

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<sup>2</sup> See, Minn. R. part 1300.0160, subp. 2.

There are no anticipated effects on state revenue associated with the proposed rule.

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

The Department believes that this rule is likely to reduce overall code administration and construction costs.

The agency's statutory authority requires the code to "conform insofar as practicable to model codes generally accepted and in use throughout the United States."<sup>3</sup> Given this requirement and in light of the other rule chapters currently being amended, the least costly method of implementing this statutory mandate is to amend those rules that govern the administration of those chapters. This method is the least intrusive method of achieving the purpose of the proposed rules because those persons using the family of codes that comprise the MSBC will not be required to learn entirely new rules governing the administration of the MSBC.

**(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 national model codes that are incorporated by reference into Minnesota's family of codes each have an administrative chapter. However, those chapters are inconsistent with each other. As a result, one rule chapter to administer the family of codes has been adopted so that users of the code would have a single uniform and convenient administrative source. This rulemaking updates that administrative chapter. As a result, other alternatives were not considered.

**(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 anticipates that the probable costs of complying with the proposed rule will be minimal for those municipalities that administer and enforce the MSBC. The Department believes that any costs associated with the proposed rule are likely to be passed on to the building owner in light of the fee-for-service structure of fees imposed by municipalities that administer and enforce the MSBC.<sup>4</sup> In those circumstances where the Department believes there may be a cost related to compliance, a discussion of the probable costs appears in the rule-by-rule analysis section.

**(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**

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<sup>3</sup> Minn. Stat. § 16B.61, subd. 1 (2004).

<sup>4</sup> See, Minn. R. part 1300.0160, subp. 2.

**separate classes of government units, businesses, or individuals:**

A consequence of not adopting the proposed rules is that all users will have to refer to the current administrative chapter. If concurrent amendments that are being proposed to other chapters within the family of codes are adopted then the current administrative chapter will not be aligned with those amendments, which the Department believes will create confusion for all users.

**(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 existing federal regulations that regulate the administration of the MSBC.

**PERFORMANCE-BASED RULES**

Minnesota Statutes, section 16B.61 authorizes the Department to establish, by rule, duties and responsibilities for code administration, including procedures for administrative action, penalties, and suspension and revocation of certification. The proposed rules are performance-based in that they update the duties and responsibilities for code administration to align with concurrent updates to other rule chapters in the MSBC.

**ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a January 29, 2007 letter by Administrative Law Judge Richard C. Luis.

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. 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. Minnesota Association of Townships;
- i. League of Minnesota Cities;
- j. Builders Association of Minnesota;
- k. Builders Association of the Twin Cities;
- l. Minnesota State Fire Chiefs Association;
- m. Minnesota Mechanical Contractors Association;
- n. Minnesota Plumbing, Heating, and Cooling Contractors' Association;

- o. American Society of Civil Engineers – Minnesota;
- p. American Council of Engineering Companies of Minnesota;
- q. Minnesota Utility Contractors Association; and
- r. 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 Rules to everyone who has registered to be on the Department's rulemaking mailing list pertaining to rulemaking pertaining specifically to code administration, building official certification and construction approvals, and generally to all rulemakings related to the construction codes under Minnesota Statutes, section 14.14, subdivision 1a. Those persons include:

- a. Cities, townships, and counties;
- b. Colleges and universities;
- c. American Institute of Architects – Minnesota;
- d. Architectural and professional engineering firms;
- e. Building Owners and Managers Association;
- f. Association of Minnesota Counties;
- g. Government agencies;
- h. the Builders' Association of Minnesota – St. Paul;
- i. the Fire Marshals Association of Minnesota; and
- j. 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 December 20, 2006. 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 December 21, 2006, 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. I saw no evidence of additional changes that would 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>5</sup> or any statutory or home rule charter that has less than 10 full-time employees<sup>6</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. The Department concluded that it is highly unlikely that small business would incur costs in excess of \$25,000 in the first year the rules are in effect because potential cost is likely to be limited to the purchase or download of the chapter. The Department further concluded that a small city is unlikely to incur costs in excess of \$25,000 in the first year the rule is in effect because the likelihood that construction volume related to inspections would increase to that degree is low to non-existent.

### **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 Labor and Industry, Construction Codes and Licensing Division staff; and
2. Advisory Committee members representing the Division, the Association of Minnesota Building Officials, the National Association of Home Builders, the Builders' Association of the Twin Cities, and the League of Minnesota Cities.

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

#### **1300.0030 PURPOSE AND APPLICATION**

**Subpart 1. Purpose.** The proposed amendment rewrites this subpart because the current language was taken from the administrative chapter of the 1997 Uniform Building Code. The proposed language is taken verbatim from section 101.3 of the 2006 International Building Code (the "IBC"), which is promulgated by the International Code Council (the "ICC"). The intent of amending the language is to keep the language consistent with the ICC model code documents that are in the process of being incorporated into other State Building Code chapters. The main change from the current language is the addition of the words "and to provide safety to fire fighters and emergency responders during emergency operations." At first glance, this provision seems to require a new level of protection that extends beyond the general public. However, the building code currently has and will continue to include many provisions that benefit fire fighters and emergency responders.

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<sup>5</sup> Hereinafter referred to as a "small business."

<sup>6</sup> Hereinafter referred to as a "small city."



**Subp. 2 C. Application.** This new subpart addresses the impact of future code amendments on existing permits and the work authorized by a particular permit. Although it is standard practice to enforce the code under the code that was in effect at the time a permit was issued, it is necessary to clearly spell this out.

The proposed language works in conjunction with rule part 1300.0130 subpart 7, which states, "The code in effect at the time of application shall be applicable."<sup>7</sup> The proposed amendment, in tandem with rule part 1300.0130, subpart 7, makes it clear that plan review, permit issuance, and construction work will be done in compliance with the code in effect at the time the application for permit was submitted.

Complimentary language has also been added to 1300.0110, subp. 4, to clarify that notices and orders must be based on the edition of the Code under which the permit was issued.

### **1300.0040 SCOPE.**

This rule part was modified to clarify what constitutes a story. Language specifying the scope of the MSBC was taken from section 101.2 of the 2000 International Residential Code (the "IRC") and the 2000 IBC. Both of these model codes use similar language, e.g. "not more than three stories in height," to determine the story limitations for constructing a residential building to the IRC. Based on the definition of a story, a three-story dwelling with an ordinary basement would be a four-story dwelling, causing the building to fall outside the scope of the IRC, which would require the residential dwelling to be constructed to the IBC. The intent of the IRC is not to include a basement that is not a "story above grade" in determining the height of a building. As written, the model codes do not adequately address what constitutes a basement/story for residential buildings. For example, when is a walkout basement, lookout basement or split-level floor considered a story?

To clarify this issue, the language "three stories high" provided in 1300.0040 has been changed to "three stories above grade plane in height."

Both the 2006 IBC and 2006 IRC provide the same definition for "grade plane." As amended, the IRC will provide a definition for "story above grade plane." The IBC already provides a definition for stories above grade plane.

An exception has also been added to clarify that existing and historic buildings undergoing repair, alteration, or a change in occupancy must comply with the Conservation Code for Existing Buildings.<sup>8</sup> Reference to Minnesota Rules, chapter 1311, currently appears in rule part 1305.3401 as an amendment to the IBC. Minnesota Rules, chapter 1311, replaces chapter 34 of the IBC. The tracking is at best cumbersome. Providing a reference to chapter 1311 in the administrative chapter provides better tracking for individuals using the code.

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<sup>7</sup> This rulemaking does not propose an amendment to Minn. R. 1300.0130, subp. 7.

<sup>8</sup> Minnesota Rules, ch. 1311.

The 2000, 2003 and 2006 editions of the International Residential Code (IRC) do not contain occupancy classifications. The Department is concurrently amending Minnesota Rules, chapter 1305, 1306, 1309, and 1341 to include occupancy classifications. In order to be consistent with these amendments, the occupancy classifications have been included within this subpart.

Further modification is proposed to delete the phrase “and their accessory structures” because the IRC-4 occupancy classification pertains to accessory structures, so the language has become redundant.

### **1300.0060 OPTIONAL ADMINISTRATION**

This modification properly identifies the appendix chapter that municipalities may adopt, without amendment, as appendix chapter J, which pertains to grading requirements.

### **1300.0070 DEFINITIONS**

**Subpart 11. Family adult day services.** The headnote and the language of this subpart was amended to change the phrase “family day care home” to “family adult day services,” which accommodates a new licensing category for adult day care/services that the Legislature added in 2004, which can be found in Minn. Stat. § 245A.143<sup>9</sup>. The State Fire Marshals’ Division provided the proposed language.

**Subp. 12a. International residential code (IRC) occupancy classifications.** This new subpart identifies, by classification, the different types of structures that can be constructed under the residential code.<sup>10</sup> The proposed language is intended to provide clarity to the building official that must classify these structures. Providing clear classifications for the various types of residential structures that can be constructed will assist the building official in determining the proper classification as well as aligning the structures with other applicable requirements of the code. The proposed language will clarify which occupancy classification is required to appear on these documents.

**Subp. 14. Manufactured home.** This subpart is modified to reflect the proposed occupancy classifications specified in subpart 12a above. Additionally, the proposed occupancy classification is necessary because the R-3 no longer exists in the IRC. The IRC-1 occupancy classification means a single-family dwelling, which is the appropriate occupancy classification since a manufactured home can only be used as a single-family dwelling.

**Subp. 22. Residential Hospice Facility.** This definition has been amended to complement the licensing standard for residential hospice facilities.<sup>11</sup> The proposed language amends the number of beds in the licensed facility from six to 12 persons to one to 12 persons.

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<sup>9</sup> See, 2004 c 288 art 1 s 27.

<sup>10</sup> Minn. R. ch. 1309.

<sup>11</sup> Residential hospice facilities are licensed by the Minnesota Department of Health. See, Minn. Stat. § 144A.75, subpart 13.

## 1300.0110 DUTIES AND POWERS OF BUILDING OFFICIAL

**Subpart 4. Notices and orders.** This subpart has been modified to clearly indicate how notices and orders are issued by the building official. This amendment directs the building official to issue all necessary notices or order in writing unless the writing requirement is waived by the permit applicant, contractor, owner, or owner's agent. With this language, the permit applicant, contractor, owner, or owner's agent knows how notice and orders will be issued by the building official, and that they have the ability to waive the writing requirement when circumstances permit. For example, if the building official notes that address numbers have not been provided on a dwelling at the time of final inspection, the building official would issue a written notice or order to the contractor. However, this requirement could be waived when the contractor understands what the violation is and what is required to correct the violation. In those circumstances, the building official could verbally communicate the requirement to the contractor. In other instances, the permit applicant, contractor, owner or owner's agent may want to have the notice or order in writing. Instances where this might occur are when the project terms require a change order to be processed before the contractor can correct the deficient work. In these situations, it is common for written documentation of the correction to be required. A written notice or order provides this documentation.

Language was also added to clarify that when a code cycle change occurs, notices and orders must be based on the code under which the permit was issued, which compliments the proposed modifications to rule part 1300.0030, subpart 2 C.<sup>12</sup>

**Subp. 5. Inspections.** This subpart has been modified to provide clarity as to where inspection reports and records are housed. Currently, the rule requires that reports of inspections be "kept on file at the jurisdiction," which may not be practical for some municipalities. This amendment is intended to permit municipalities to maintain their official records somewhere other than a municipal building. An example where this might occur is when a city contracts with a private inspection service to provide building code enforcement. In that situation, the contract inspection company may, as part of the contractual arrangement with the municipality, be required to keep all applicable records at their office. This change is necessary to accommodate such arrangements.

The word "jurisdiction" was changed to "municipality" to be consistent with other code language. The word "municipality" is also defined in this rule chapter whereas "jurisdiction" is not.

**Subp. 8. Department records.** This subpart was modified to clarify what the building official must do in regard to their responsibility for the official records of the municipality. The modification replaces the word "keep" with the phrase "be responsible for" because of confusion surrounding the literal meaning of the word "keep." This subpart has been mistakenly interpreted to mean that the building official must keep the municipal records with them even when the

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<sup>12</sup> See page 8.

records would be maintained somewhere other than the municipality's designated place for storage. This clarification conveys that the building official is simply responsible for the records without specifying the physical location of the records.

**Subp. 13. Alternative materials, design, and methods of construction and equipment.** This subpart is modified to replace the phrase "code enforcement agency" with the "Department of Building Safety," which is how municipal code enforcement agencies are referred to throughout the code. This modification is consistent with the terms set forth in rule part 1300.0090, subp. 1.

### **1300.0120 PERMITS.**

**Subpart 2. Annual permit.** This provision was intended to apply primarily to large buildings or industrial facilities that require licensed design by architects and professional engineers and to provide the building official with the ability to determine when an annual permit should be issued. During the 2000 code adoption cycle, this subpart was modified to allow the annual permit to include work in an already approved building as it relates to electrical, gas, mechanical, or plumbing installations. Despite this intent, building owners are requesting that building officials use this provision to issue an annual permit for interior remodeling because the provision includes the word "building." As a result, it is both necessary and reasonable to amend this subpart to limit the annual permit to an already approved electrical, gas, mechanical, or plumbing installation. The proposed rule does this by striking the words "building or."

**Subp. 4. Work exempt from permit.**

#### **Item A. Building:**

**Subitem 10.** This subitem has been modified to provide clarity where there is currently confusion. The intent of the current language is to allow a permit exemption for pools that are installed above ground and do not exceed a 24-inch depth *and* a 5,000-gallon capacity. The exemption was never intended to exempt above ground installations that exceed these thresholds or any below grade (in-ground) installation from the permit requirement. In other words, pools that are installed entirely above ground that do not exceed both thresholds are exempt from permit, and the below grade installation of a pool requires a permit without regard to the thresholds. There is confusion in the building official community because some building officials have interpreted this exemption to mean that a permit is required if *either* threshold is exceeded. Still other building officials have interpreted this exemption to include in-ground installations where the thresholds are not exceeded. Since these results are not the intent of the current law, the proposed language is necessary to more clearly articulate the intent of this provision.

An additional modification was made to correct a calculation error where the 5,000-gallon capacity was shown to be the equivalent of 19,000 liters. The correct equivalency is 18,925 liters.<sup>13</sup>

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<sup>13</sup> The formula for calculating this is gallons x 3.785 = liters.

**Subitem 11.** This subitem has been modified to correct an inadvertent error that occurred when this chapter was last updated. At that time, language was adopted that exempts awnings supported by an exterior wall of Group R-3 and Group U occupancies. The error is that the IRC did not have Group R-3 and U occupancy classifications. The proposed amendment corrects this error and is consistent with the window awning exemptions currently found in the 2006 IBC and 2006 IRC.

**Subitem 14.** This new subitem exempts swings and other playground equipment from permitting requirements. The 2006 IBC and 2006 IRC exempt swings and other playground equipment when accessory to buildings constructed under the IRC and detached one and two family dwellings constructed under the IBC.<sup>14</sup> However, national standards addressing this type of equipment have not been developed. After considering the model code language, the Chapter 1300 Advisory Committee recommended that swings and other playground equipment be exempt from permitting requirements because there are no national standards for their construction.

**Item B. Gas, Subitem 3, and Item C. Mechanical, Subitem 8.**

These are new subitems. Portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid have been added to the laundry list of construction not requiring a building permit. This is consistent with model code language in the 2003 and 2006 IRC.

**Subp. 8. Action on application.** The modification to this subpart is intended to clarify that the building official is required to notify a permit applicant if the application is rejected and the reasons for the rejection. Currently, there is disagreement within the building official community as it relates to the “in writing” requirement that exists in rule today. In the extreme, some building officials have determined that a formal letter is the minimum standard required to provide notice to the permit applicant. However, the intent of the current language was to include less formal writings such as an application checklist, a form letter, a plan review checklist, an email, or other similar methods of documented communication. The proposed amendment is intended to require that the building official document the decision to reject a permit application and inform the applicant of that rejection. The advisory committee believes that this will provide a municipality with flexibility given the time constraints that are commonly placed on a department of public safety.

In order to provide this clarity, the proposed language deletes the phrase “in writing,” and adds a sentence directing the building official to document the reasons for rejecting the permit application. In this way, the building official continues to be required to articulate the reasons a permit application is rejected while providing the municipality with the flexibility to document such rejection using a variety of methods.

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<sup>14</sup> One and two family dwellings can be constructed to the IBC.

## **1300.0130 CONSTRUCTION DOCUMENTS.**

**Subpart 6. Approval of construction documents.** The proposed rule requires construction documents that are reviewed by the building official to bear a stamp saying "Reviewed for Code Compliance," along with the date of approval and the signature of the building official or an authorized representative. The intent of the modification is to provide a record of who conducted the plan review as well as the date the review was approved. This information will identify the code that was in effect at the time the plan was reviewed, which will be helpful in determining the expiration date of permits and whether work started prior to plan approval. Knowing the identity of the person approving the plan will be helpful in the event questions or comments about the review arise during the construction process.

## **1300.0160 FEES.**

Various sections of Minnesota Statutes, sections 16B.59 through 16B.75 authorize municipalities to issue permits and collect fees. Minnesota Rules, rule part 1300.0160, subparts 1-2 are intended to give municipalities the specific authority to establish their own customized fee schedules. However, building officials have requested that this authority be more explicit.

**Subpart 1. Schedule of permit fees.** This modification is intended to clearly state that the municipality must adopt a fee schedule establishing plan review fees when submittal documents are required, and collect the fees established by that schedule from the permit applicant. The proposed language permits the municipality to include an exemption in the fee schedule for minor work. This is intended to enable municipalities to exempt projects such as decks, lower level finishes, swimming pools, and small commercial projects from plan review fees should it desire to do so.

**Subp. 2. Fees commensurate with service.** The proposed rule is intended to provide municipalities with flexibility in the methods it uses to adopt a fee schedule that pertains to permit fees. Currently, the rule requires permit fees to be adopted by ordinance, which municipalities have indicated can be a costly and lengthy undertaking. The proposed rule would allow municipalities to adopt permit fees using any legal means. For example, a municipality may adopt the fee schedule by resolution, ordinance, or other legal means.

**Subp. 6. Plan review of similar plans.** This subpart addresses those situations where similar buildings are built from a master plan.

**Item A, subitem 3.** This modification is intended to correctly identify an exception for accessory structures that are built to the IRC or the IBC (when the residential occupancy is three stories or less in height). Currently, the rule identifies a "U" occupancy, which is an occupancy classification that does not exist in the 2006 IRC. The amendment deletes the phrase "'U' occupancy" and replaces it with "and their accessory structures," which is consistent with the 2006 IRC. The phrase "and their accessory structures" was also added to residential occupancies built to the 2006 IBC.

## 1300.0210 INSPECTIONS.

**Subpart 6. Required inspections.** This subpart requires the building official to make certain inspections. As written, the requirement for a foundation inspection and a footing inspection is contained in Item A. This has caused confusion because some municipalities are not performing foundation inspections. To clear up this confusion, the proposed rule separates the two inspections into Items A and B. The remaining items have been re-lettered accordingly.

**Item A.** In order for this item to address only footing inspections, the proposed rule moves references to the foundation inspection into item B.

**Item B.** This new item is specific to the foundation inspection and contains language currently in item A. The proposed language is intended to provide clarity and bring uniformity to the inspection because crucial construction techniques will be viewed prior to being covered. These techniques include items such as damproofing, waterproofing, insulation, wall placement in relation to footing edge, foundation anchors, foundation drainage, and bracing, which in turn affords more protection to the contractor and the consumer.

This proposal may result in an increase in cost to the building owner. The added cost is relative to the additional inspection required by the inspection department. Most municipalities will offset the cost associated with performing this inspection by increasing the build permit fee. Permit fees are typically paid for by the contractor and then passed onto the building owner. Any additional cost related to the inspection fee is likely to be minor when compared to performance and durability issues and costs associated with fixing them. Some of the performance and durability issues involve foundations and wet basement floors and walls, which can lead to health problems and costs associated with them as well. The current cost for a building permit in jurisdictions that do conduct foundation inspections should be sufficient to cover the cost of the added inspection because fees are required to be proportionate to the actual cost of the service for that fee. This requirement is already in place and all jurisdictions should be adhering to this provision.

**Item D. Frame and masonry inspection.** The current language is from 2000 IBC. This change was made to match IRC language. The IRC requires includes "masonry constructions" within this section. The IBC does not include the requirement for masonry construction. The proposed language is the same in the 2000, 2003 and 2006 editions of the IRC.

## 1300.0220 CERTIFICATE OF OCCUPANCY.

**Subpart 1. Use and occupancy.** Current language allows a municipality to not require a certificate of occupancy for "U" occupancies. The IBC has the "U" occupancy designation. However, the IRC does not use this occupancy classification. The amendment corrects this section by adding new language that states, "accessory structures constructed under the International Residential Code". The IRC defines accessory structure as follows: "in one- and two-family dwellings not more than three stories high with separate means of egress, a building, the use of which is incidental to that of the main building and which is located on the same lot."

Accessory structures would therefore include swimming pools, garages, sheds, greenhouses, carports, retaining walls, etc. The certificate of occupancy exemption for "U" occupancies constructed under the IBC stays the same.

The final change to this section involves manufactured homes. Currently the rule does not require a manufactured home owner to obtain a certificate of occupancy for a new or used manufactured home from the municipality where the manufactured home is installed. Division staff have recommended that the rule be amended to require a certificate of occupancy for both new and used manufactured homes moved within or into a municipality. The intent of the staff recommendation was to ensure that all installation and site-work related to the manufactured home is completed in compliance with the Minnesota State Building Code through the certificate of occupancy process.

The committee considered the Division's recommendation and, after reaching consensus within the committee, determined that a certificate of occupancy for a new manufactured home is necessary even though each newly manufactured home must bear a construction label certifying that the unit was constructed to the manufactured home code.<sup>15</sup> As a result, the proposed rule would require each new manufactured home to obtain a certificate of occupancy from the municipality where it is installed.

The committee also recognized that there may be concerns in verifying that a used manufactured home has not been modified or damaged in some manner that violates the code when it is moved from one location to another. For example, a water heater that sits on a section of floor that has been water damaged to a point it cannot support a 40-psi live load. To identify the problem and then determine to what extent the rotted or decayed floor must be replaced would be very difficult. As a result, the proposed rule provides that each municipality with the option of requiring a certificate of occupancy for those used manufactured homes that are moved into or within its jurisdiction.

**Subp. 4. Moved buildings.** Prior to developing a stand-alone administrative chapter for the Minnesota State Building Code, provisions for regulating moved buildings and structures were contained in section 3404 of the Uniform Building Code. When the current rule was adopted, the Division<sup>16</sup> inadvertently left out the words "or within," which it had intended to include as part of the proposed language. The consequence of this omission was that the rule did not specifically require buildings and structures that are moved within a jurisdiction to comply with the current requirements of the code.

### **1300.0230 BOARD OF APPEALS.**

**Subpart 1. Local board of appeals.** Changes in this section of the code were initiated by Rex Swanson, of Tappe Construction Company. Mr. Swanson indicated the timeline for appeals is too long and the 1300 committee agreed with his position. The current timeline is impractical

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<sup>15</sup> Minn. R. ch. 1350.

<sup>16</sup> The last rulemaking to update the family of codes was initiated and concluded by the Departments of Administration's Building Codes and Standards Division.

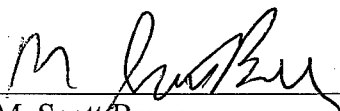


because of potential delays to the construction job. Since these rules were last updated, the Department of Administration's Building Codes and Standards Division has established a state appeals board. The state board of appeals can be used for jurisdictions that do not have a board of appeals. Following the state board of appeal's timeline of ten days would be more practical. In addition, there should be no difference in the timeline based on the type of building associated with the appeal. There should also be no difference in the timeline for the appeal whether or not the appeal was requested before or after the permit was issued. The length of time for the board of appeals to render a decision and forward the decision to the building official and state building official was reduced from 15 days to five days. Five days is ample time for the appeals board to prepare and submit the decision and findings. The Department believes that the proposed changes will make the appeals process more practical for those involved in the appeal process.

### CONCLUSION

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

11/30/07  
Date

  
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M. Scott Brener  
Commissioner