Minnesota Department of Labor and Industry

Construction Codes and Licensing Division

(In cooperation with the State Fire Marshal Division, Department of Public Safety)

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to and Repeal of Rules Governing the Minnesota State Fire Code, Minnesota Rule parts 7511.0903, 7511.0907, 7511.3800, 7511.4500, 7511.8500, 7511.8510, 7511.8520, 7511.8530, 7511.8540, 7511.8550, 7511.8560, and 7511.8570.

INTRODUCTION

The commissioner of the Minnesota Department of Labor and Industry ("the Department") proposes to adopt amendments to Chapter 7511, the Minnesota State Fire Code, which currently adopts the 2006 International Fire Code ("IFC"). The Minnesota State Fire Code is administered by the Department of Public Safety through the Fire Marshal Division ("FMD"). Effective May 16, 2005, the authority for promulgating the State Fire Code was transferred to the Department, in consultation with the State Fire Marshal. The State Fire Marshal utilized the Minnesota State Fire Chiefs Association ("MSFCA"), comprised of members of the MSFCA and state and local fire and building officials, as an advisory committee. This committee recommended to the State Fire Marshal the standards that are proposed to be updated. On February 28, 2011, the Department published its Request for Comments for the proposed rule in the State Register.

The current State Fire Code, Minnesota Rules, chapter 7511, incorporates by reference the 2006 edition of the IFC with certain amendments. The proposed rules adopt newer versions of selected standards, published by the National Fire Protection Association ("NFPA") of Quincy, Massachusetts, which are referenced in the IFC and amend language associated with the adoption of these standards. In addition, the Department proposes to repeal certain rules that apply to furniture flammability standards that are adequately covered in the 2006 IFC.

Typically, the IFC and incorporated installation standards are adopted simultaneously approximately every three years. On February 23, 2009, the commissioners of the Departments of Labor and Industry and the Department of Public Safety decided not to adopt the 2009 version of the IFC. As a result, some of the standards referenced in the IFC are or are becoming too outdated. The decision to skip the adoption of the 2009 IFC has necessitated that certain NFPA Standards be updated to keep current with new technologies. These standards are national models and once a new standard is published, it becomes difficult to find training materials and handbooks for the previous editions of the standards. Therefore, it is necessary to update some of the NFPA standards referenced in the IFC and incorporated by Minnesota's State Fire Code found in Minnesota Rules, chapter 7511.

The NFPA Standards are updated nationally and amended generally at 3-year intervals based on recommendations received from fire and building officials, architects, engineers and representatives from the various industries to which the standards apply. The intent is to

incorporate up-to-date NFPA Standards referenced in the IFC that will permit the use of modern methods, devices, materials and techniques, handbooks and training materials, which will tend to lower construction, education, and maintenance costs.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact: Colleen Chirhart at the Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul MN 55155, Phone: 651-284-5867, FAX: 651-284-5749 TTY users may call the Department at (651) 297-4198.

STATUTORY AUTHORITY

Minnesota Statutes, section 326B.02, subdivision 6, requires the Department to adopt and make amendments to the State Fire Code, consistent with recommendations of the state fire marshal. Minnesota Statutes, section 299F.011, subdivision 3, requires the Department of Public Safety to adopt rules as may be necessary to administer and enforce the State Fire Code.

Under these statutes, the Department of Labor and Industry, in consultation with the State Fire Marshal, has the necessary statutory authority to adopt the proposed rules.

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 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 fire inspection personnel, building inspection personnel, building contractors, fire protection contractors, architects, engineers, building owners and managers, and ultimately, the general public.

The classes of persons who probably will bear the costs of the proposed rule include property owners and managers, who generally bear the cost of fire code compliance. Also, the general public may bear the costs of the proposed rule because costs are often passed down to the general public.

The classes of persons who will probably benefit from the proposed rule include fire and building inspection personnel because they will be inspecting to the most current standards that are being used in the industry. Architects, engineers, and contractors will benefit by having a uniform set of minimum design standards to design to that apply throughout the state. The general public

will benefit by being provided safer buildings with newer fire protection technologies to better protect human life and by providing better property protection through the use of new devices and technology.

"(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 cost to the Department for the implementation of the proposed rule includes the cost for this rulemaking. The probable cost to the FMD for the implementation and enforcement of the proposed rule is negligible because the FMD and the Department already have online subscriptions for the NFPA Standards. The FMD will incur a small cost for installation standards handbooks. Any training offered by the FMD is offset by fees charged for the training, with the exception of staff time.

The probable costs to other fire services in the state includes costs for new NFPA Standards, handbooks, and staff training for fire service personnel.

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 to update the NFPA Standards in the IFC. The NFPA Standards are the most current, coordinated, comprehensive, recognized standards in the United States. No other group of standards exists that are as comprehensive as the NFPA Standards for this purpose. The NFPA Standards are referenced in the IFC and, as a result, are the only standards that should be considered in this rulemaking.

"(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 FMD did not consider any other methods for achieving the purpose of the proposed rule because reviewing the most recent editions of the NFPA Standards and deciding whether or not to incorporate the newest editions is the only way to achieve the purpose of incorporating current NFPA Standards, which are referenced in the IFC. The FMD did, however, receive proposals from the industry recommending that the FMD update certain editions of the NFPA Standards. The FMD considered these proposals and decided to incorporate many of the proposed editions. As an example, the Minnesota Propane Association recommended that the FMD incorporate the 2011 edition of NFPA 58 instead of the 2008 edition of that standard. This recommendation was incorporated into 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 proposed rules update certain currently incorporated NFPA Standards currently referenced in the IFC, which may or may not affect costs associated with the methods or technologies currently in place. It is difficult to quantify the effect of changes to methods and technologies. While some changes may add a cost to a certain device or system, others may reduce a cost associated with a device or system. Overall, the net effect of changes is not significant because many of the newer standards are intended to lessen the fiscal impact of the State Fire Code, while still maintaining an acceptable level of fire and life safety.

If there are increased costs associated with changes to the methods and technologies in the standards, they will likely be borne by building owners and managers, and ultimately passed on to the general public.

"(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"

If the proposed rules are not adopted, code users will be required to continue the use outdated standards, which, in many instances, will force designers to design fire protection systems with outdated equipment and designs, which may result in less efficient systems or devices.

Also, inspection personnel will be forced to continue to require, inspect, and enforce outdated fire code requirements. Another consequence is that fire protection system designers may be forced to design systems with antiquated designs and devices. Training materials used to train the fire protection industry are becoming more difficult, if not impossible, to obtain.

"(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"

While several federal regulations exist regarding fire protection requirements, they will not be affected by this proposed rulemaking because the proposed rules merely update certain NFPA Standards to more current editions. The more current NFPA editions will not change the federal requirements already in place for fire protection.

PERFORMANCE-BASED RULES

Minnesota Statutes, section 14.002, requires state agencies to emphasize "superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals." Pursuant to Minnesota Statutes, section 14.131, the agency must describe how it considered and implemented this policy of performance-based regulatory systems.

The IFC, which references NFPA Standards, is a comprehensive code that establishes minimum regulations for fire prevention and fire protection systems and uses prescriptive and performance-related provisions. The IFC is founded on broad-based principles that make possible the use of new materials and new system designs. The NFPA Standards are based on the application of scientific principles, approved tests, and professional judgment. The updated NFPA

Standards incorporate the latest technological advancements that will permit designers, contractors, and building owners more flexibility with the design and installation of the fire protection systems. By incorporating performance-based regulations and providing the latest technology, the IFC and the NFPA Standards provide the industry with the flexibility to design and install fire protection systems and to administer fire prevention regulations more effectively and efficiently.

ADDITIONAL NOTICE

Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made. This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a December 14, 2011 letter by Administrative Law Judge Eric L. Lipman.

Our Additional Notice Plan includes giving notice to the following interested parties:

• Minnesota Building Officials: All municipal building code officials and others involved in building code administration. This list has over 800 names and includes: all municipal building officials responsible for administration of the state building code; officials from other cities, towns, and counties who need to be aware of these proposed rules as they apply to public buildings within their jurisdiction; and University of Minnesota and MSP airport building officials.
• American Society for Civil Engineering
• Association of Minnesota Counties
• Associated General Contractors of Minnesota
• Builders Association of Minnesota
• Builders Association of the Twin Cities
• Minnesota Association of Plumbing, Heating and Cooling Contractors
• Minnesota Mechanical Contractors Association
• Minnesota Historical Society
• Minnesota Housing Finance Agency
• League of Minnesota Cities
• Metropolitan Council
• Minnesota Building Owners and Managers Association
• Associated Builders and Contractors, Minnesota Chapter
• Minnesota Pipe Trades Association
• Minnesota Propane Gas Association
• Minnesota Retailers Association
• Minnesota State Fire Chiefs Association, including all members of the Minnesota State Fire Chiefs
• Association Code Committee (MSFCA)

Our Notice Plan also includes giving notice required by statute. We will mail and email the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list for the fire code and state building code categories under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota

Statutes, section 14.116. We will publish our proposed rules, SONAR, and Notice of Intent to Adopt Rules on the Department's website.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

We will not submit the rules to the state Council on Affairs of Chicano/Latino People per Minnesota Statutes, section 3.922 because the rules do not have their primary effect on Chicano/Latino people.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (MMB). On October 19, 2011, the Department sent to MMB copies of the documents that were sent to the Governor's Office for review and approval, which included the Governor's Proposed Rule and SONAR Form, draft copies of the rule draft and draft SONAR, and a cover letter requesting the review. In a letter dated December 19, 2011, MMB informed the Department that, based on the information provided to it, the proposed rule amendments will not impose a significant cost on local governments. The Department will submit a copy of the cover correspondence sent to MMB and the response received from MMB to OAH with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

Pursuant to Minnesota Statutes, section 14.128, the Department has determined that a local government will not be required to adopt or amend an ordinance or other regulation to comply with these proposed rules. The State Fire Code is the standard that applies statewide, but a local government may adopt stricter standard. Minnesota Statutes, section 299F.011, subdivision 4, mandates compliance with the State Fire Code whether or not a local government adopts or amends an ordinance. As a result, an ordinance or other regulation is not required for compliance. If a city wishes that its ordinances accurately reflect legal requirements in a situation in which the Code has superseded the ordinances, then the city may want to amend or update its ordinances.

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 in the first year after the rules take effect will exceed $25,000 for any small business or small city. 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 based its determination on the fact that the proposed rules do not require a small business or small city to construct, install or retrofit systems affected by the proposed NFPA Standards in new or existing buildings within the first year after the rules take effect. Further, the proposed rules merely update certain NFPA Standards that a small business or small city may or may not apply to a fire protection system. As a result, it is

impossible for the Department to quantify costs about which NFPA Standards would apply for installations and the timeframes associated with the installations.

The SFM has adopted a uniform policy for granting extensions of time for compliance with corrective orders. A copy of the policy can be for at: https://dps.mn.gov/divisions/sfm/document-library/Documents/Inspection%20Policies-General/INS02(2007)-Timeforcorrectionoforders.pdf. The policy was adopted because of the "reasonable time" requirement in Minnesota Statutes, section 299F.011, subdivision 6: "No person shall be convicted for violating the Uniform Fire Code unless the person shall have been given notice of the violation in writing and reasonable time to comply." The policy (Policy INS-02 (2007), section 1, subitem 6) provides a time extension of three or more years:

> 6. Time extensions up to 3 years from the date of the orders can be given by the Deputy inspecting the property. Compliance times beyond 3 years must be reviewed and approved by the supervisor. Requests for time extensions exceeding 5 years must be referred to the Fire Marshal Code Advisory Panel (FMCAP). Forms shall be provided for this procedure.

In determining the length of the extension granted, the State Fire Marshal considers the cost and scope of work. Because of this policy, it is extremely unlikely that any significant compliance costs to a small business or small city would need to be borne within the first year after the rules take effect.

Most costs associated with compliance with the NFPA Standards and the IFC would be minimal, if any, and passed on from a contractor or installer to the building owner or general public so there would be no net financial effect to a small business or small city.

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. Staff of the State Fire Marshal Division, Minnesota Department of Public Safety, Fire Marshal Division, 444 Cedar Street, Suite 145, St. Paul, Minnesota 55101.

2. Staff of the Department of Labor and Industry, Construction Codes and Licensing Division and the Office of General Counsel.

RULE-BY-RULE ANALYSIS

7511.0090 CODES AND STANDARDS INCORPORATED BY REFERENCE.

This rule part is being split into subparts and the existing language from this part will be labeled as subpart 1. A new section is being added as subpart 2 to incorporate by reference the National Fire Protection Association Standard Number 58. This language is relocated from rule part 7511.3800 so that all incorporations by reference are located in one rule part. This amendment is reasonable

and necessary because it simplifies and clarifies for the user which publications are incorporated into the rule, but does not make a substantive change to the requirements.

7511.0903 SECTION 903, AUTOMATIC SPRINKLER SYSTEMS.

Subpart 4. 903.3.1.6.4 NFPA 13 Modifications.

The rule language in subpart 4 amends several sections in the current edition of NFPA 13. The proposed changes to 7511.0903, subpart 4 delete two of the amendments made to section 903.3.1.6.4 in the 2006 IFC. The proposed amendment deletes sections 8.6.4.1.4.2 and 8.6.4.1.4.3 of the current edition of NFPA 13 because the identical language is now in the 2010 edition of NFPA 13. The remaining changes revise current section numbers, which were renumbered in the NFPA 13, 2010 edition. This amendment is reasonable and necessary because it deletes requirements that would otherwise be repeated and renumbers sections to coordinate with the updated 2010 edition of this standard, but does not make a substantive change to the requirements.

7511.0907 SECTION 907, FIRE ALARM AND DETECTION SYSTEMS

Subpart 20. 907.3.6.2 NFPA 72 Modifications.

This subpart amends section 29.5.1 in the current edition of NFPA 72 by adding an exception for single station smoke alarms. This language is identical to the requirements in the NFPA 72 standard that is currently incorporated in the IFC. This language was removed in the updated 2010 edition of NFPA 72. The NFPA 72 committee had a philosophical change with the 2010 edition of this standard and the standard now applies to new installations and the main body of the IFC determines if a provision will apply to new or existing properties. Without the proposed amendment, smoke alarms will be required retroactively in all sleeping rooms of residential occupancies. While this requirement does apply to new construction and major remodeling projects, it has not been a retroactive requirement for sleeping rooms in residential occupancies in past codes or standards. This proposed amendment will keep the existing language in the requirement, but is being added back in to the amendment as an exception to the new requirements in the 2010 edition of NFPA 72.

Although this amendment appears to make a substantive change to the requirements, the requirement remains unchanged from the last rule adoption. The new language in the 2010 edition of NFPA 72 had to be amended in order to keep the Minnesota requirement the same as it has been. This is not a substantive change because the requirement is not changing for Minnesota. This amendment is reasonable and necessary because the Department is not proposing to make substantive changes in the course of the rulemaking and this amendment ensures that the requirement remains unchanged.

7511.3800 CHAPTER 38 – LIQUIFIED PETROLIUM GASES.

The first sentence the proposed new subpart 1 in this part is amended to clarify that the intent of the section is to delete IFC Chapter 38 and replace it with NFPA 58, with amendments. The incorporation by reference language is deleted from this part and moved to rule part 7511.0090 to

locate all incorporations by reference together. Further, the incorporation by reference language is not technically part of the requirements in NFPA 58 and makes the section confusing.

Subparts are added to the section to help separate and clarify the content of each subpart. Subpart 1 explains the deletion and replacement occurring within the part. Subpart 2 provides a scope and requires the subject areas identified in the scope to comply with NFPA 58, as amended. The statement requiring compliance with NFPA 58 was originally contained in section 3801 of the IFC, but because chapter 38 is being deleted by amendment, it is reasonable and necessary to establish the scope and intent of this rule part. Subparts 3 and 4 provide amendments to specific sections in NFPA 58. The technical content in these subparts has not changed, however, section numbers in the 2011 edition of the NFPA 58 were revised, so the corresponding sections in the amendments are renumbered to coordinate with changes in the 2011 edition.

7511.4500 CHAPTER 45 – REFERENCE STANDARDS

Revisions to 7511.4500 are intended to update selected NFPA standards to a new edition. Chapter 45 in the IFC lists standards that are referenced in various sections throughout the IFC. These standards shall be considered part of the requirements of the state fire code and applied to the prescribed extent of each such reference. The standards were selected because the industry or fire service requested that they be updated. The changes in the new editions, when compared to the existing standards, have been found to be non-controversial by the MSFCA, the committee that reviewed the proposed amendments. The Department is proposing to update to newer editions to provide the industry with newer methods and technologies. This amendment is reasonable and necessary because the incorporation of up-to-date NFPA Standards will permit the use of modern methods, devices, materials and techniques, and training materials and handbooks, which will tend to lower construction, education, and maintenance costs.

The chart that follows summarizes each standard by title, the current edition incorporated in the IFC, and the corresponding proposed updated edition to be incorporated, followed by a brief explanation of each standard:

Standard Number	Current Edition	Proposed Edition
NFPA 11	2002	2005
NFPA 11A	1999	Delete, included in NFPA 11 above
NFPA 12	2000	2008
NFPA 12A	2004	2008
NFPA 13	2002	2010
NFPA 13R	2002	2010
NFPA 14	2003	2007
NFPA 20	2003	2010
NFPA 25	2002	2008
NFPA 30	2003	2008
NFPA 30A	2003	2008
NFPA 58	2004	2011

NFPA 72	2002	2010
NFPA 2001	2004	2008
NFPA 1123	2000	2006
NFPA 1126	2001	2006

NFPA 11 addresses the installation of "Foam Fire Protection Systems"
NFPA 11A is no longer published. All provisions have been incorporated into NFPA 11
NFPA12 addresses the installation of "Carbon Dioxide Fire Suppression Systems"
NFPA 12A addresses the installation of "Halon 1301 Fire Suppression Systems"
NFPA 13 addresses the installation of "Fire Sprinkler Systems"
NFPA 13R addresses the installation of "Fire Sprinkler Systems in Residential Occupancies"
NFPA 14 addresses the installation of "Fire Standpipe Systems"
NFPA 20 addresses the installation of "Stationary Pumps for Fire Protection Systems"
NFPA25 addresses the "Inspection, Testing and Maintenance of Water Base Fire Systems"
NFPA 30 addresses primarily "Construction standards for Flammable/Combustible Liquids Facilities"
NFPA 30A addresses specifically "Motor Fuel Dispensing"
NFPA 58 addresses "Liquefied Petroleum Gas "
NFPA 72 addresses the installation of "Fire Alarm and Signaling Systems"
NFPA 2001 addresses "Clean Agent Fire Extinguishing Systems"
NFPA 1123 addresses "Code for Fireworks Display"
NFPA 1126 addresses "Standard for the Use of Pyrotechnics Before a Proximate Audience"

REPEALER

Repeal of 7511.8500, 7511.8510, 7511.8520, 7511.8530, 7511.8540, 7511.8550, 7511.8560 and 7511.8570.

All of the above related rules address Furniture Flammability rules for public buildings and are no longer necessary for the following reasons:

- The Furniture Flammability statutes, Minn. Stat. §§ 299F.840-299F.848, were repealed in 2008. Minn. Laws, Chapter 343, subd. 1.
- The specific statute authorizing rule-making for furniture flammability, Minn. Stat. 299F.844, was repealed with the other related statutes.
- The Minnesota State Fire Code (MSFC) now contains provisions for furniture flammability in Chapter 8: specifically section 805 dealing with upholstered furniture which is the substance of the furniture flammability statutes and rules.
- Although MSFC 805 differs slightly from the former furniture flammability rules, MSFC 805 addresses the occupancies where furniture flammability has been a safety issue. (Group I and board & care facilities)

This amendment is reasonable and necessary because the requirements are either redundant or were repealed by Minnesota Statutes and are no longer appropriate to be included in the State Fire Code.

CONCLUSION

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

Date 1/6/12

Ken P. Peterson, Commissioner
Department of Labor and Industry

In consultation with:

Date 1/5/12

Jerry Rosendahl, State Fire Marshal
Department of Public Safety