Minnesota Department of Labor and Industry

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Certain Rule Chapters in the Minnesota State Building Code, Minnesota Rule parts 1305.0903, 1305.3500, 1307.0092 1309.4300, 1346.1500, and 1346.5800.

INTRODUCTION

The commissioner of the Minnesota Department of Labor and Industry proposes to adopt amendments to certain chapters in the Minnesota State Building Code ("MSBC") to coordinate with proposed amendments currently being considered for the Minnesota State Fire Code ("MSFC"). The MSFC is administered by the Department of Public Safety through the Fire Marshal Division, and the Department of Labor and Industry adopts the Minnesota State Fire Code in cooperation with the Fire Marshal Division. The proposed amendments under consideration for the MSFC will affect certain provisions in the MSBC, which must be coordinated.

The current MSFC, *Minnesota Rules*, chapter 7511, incorporates by reference the 2006 edition of the *International Fire Code* ("IFC"), with certain amendments. The 2009 editions of the IFC and other coordinating International Codes typically adopted in Minnesota were not incorporated into the latest versions of the MSFC and MSBC. As a result, some of the standards referenced in the 2006 IFC are becoming outdated and newer standards are needed to keep current with new technologies. The proposed amendments being considered for the MSFC will incorporate newer versions of the selected standards, published by the National Fire Protection Association ("NFPA"), Quincy, Massachusetts. Because the proposed amendments to update the selected NFPA Standards referenced in the IFC are also referenced in the MSBC, it is necessary and reasonable to amend the coordinating provisions that reference the same NFPA Standards in the MSBC to eliminate any conflict or confusion between the codes and to ensure uniform application among the building and fire industries.

ALTERNATIVE FORMAT

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

STATUTORY AUTHORITY

The Department's statutory authority to adopt rules is set forth in *Minnesota Statutes*, sections 326B.02, 326B.101, and 326B.106. *Minnesota Statutes*, section 326B.02, subdivision 5, provides general rulemaking authority for the Department. This subdivision states:

> Subd. 5. **General rulemaking authority.** The commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend,

and repeal rules relating to the commissioner's responsibilities under this chapter, except for rules for which the rulemaking authority is expressly transferred to the Plumbing Board, the Board of Electricity, or the Board of High Pressure Piping Systems.

Minnesota Statutes, section 326B.101, states:

> The 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 326B.106, subdivision 1, states, in part:

> Subdivision 1.**Adoption of code.** Subject to sections 326B.101 to 326B.194, the commissioner shall by rule and in consultation with the Construction Codes Advisory Council 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 326B.101 to 326B.194, the commissioner shall administer and enforce the provisions of those sections.

Under these statutes, the Department 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 building officials, building inspection personnel, building contractors, architects, engineers, fire inspection personnel, fire protection contractors, building owners and managers, users of the structures, and ultimately, the general public.

The classes of persons who will probably bear the costs of the proposed rule include building owners and managers, who generally bear the cost of code compliance. When businesses pay these costs, they are typically passed on to consumers.

The classes of persons who will probably benefit from the proposed rule include building and fire inspection personnel because they will be inspecting to the most current standards 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 costs to the Department for the implementation and enforcement of the proposed rule are negligible. The Department currently has an online subscription to the NFPA Standards. The Department may incur a small cost for any hardcopy standards or other handbooks purchased. Any training that may include information about the updated NFPA Standards is offset by fees charged for the training, with the exception of staff time.

The probable costs to other service agencies in the state include costs for new NFPA Standards, handbooks, and any staff training necessary for 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 Minnesota State Building Code. 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 several chapters of the MSBC, and as a result, are the only standards that can be considered for 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 Department did not consider any other method 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 more current NFPA Standards. The State Fire Marshal Division determined which of the NFPA Standards should be updated and incorporated them into its MSFC rulemaking. As a result of those proposed amendments, the same NFPA Standards must be updated in certain chapters of the MSBC for purposes of coordination and uniform enforcement.

"(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 certain chapters in the MSBC, which may or may not affect costs associated with the methods or technologies currently in use. 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 MSBC, while still maintaining an acceptable level of building and life safety.

"(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"

The probable costs of not adopting the proposed rule will also require code users to continue to use outdated standards, which, in many instances, will force designers to design systems with outdated equipment and designs, which may result in less efficient systems or devices.

The probable consequences of not adopting the proposed rule will require code users to continue the use of outdated standards, which will force inspection personnel to continue to require, inspect, and enforce outdated code requirements. Another consequence is that system designers may be forced to design systems with antiquated designs and devices. Moreover, certain training materials used to train industry personnel 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 do not apply to this proposed rulemaking because the proposed rules merely update certain NFPA Standards to more current editions. The newer 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.

Minnesota Statutes, section 326B.101, states in part:

> ...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 326B.106, authorizes the Department to establish, by rule, a code of standards for construction. This statute requires the code to "conform insofar as practicable to model building codes generally accepted and in use throughout the United States." At the same time, this statute requires that *"to the extent possible,"* the code be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible, the incorporation of particular methods or materials.

The MSBC establishes minimum requirements for construction and are founded on broad-based principles that make the use of new methods, materials, and construction practices possible. The proposed rules are intended to incorporate the philosophy required by Minnesota Statutes, sections 326B.101 and 326B.106.

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 February 14, 2012, letter by Administrative Law Eric L. Lipman.

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

a. All municipal code officials and others involved in code administration.
b. Members of the Minnesota State Fire Chiefs Association (MSFCA);
c. The Metropolitan Council;
d. Minnesota State Fire Marshal;
e. Minnesota Electrical Association;
f. Minnesota Housing Finance Agency;

g. American Society of Civil Engineering;
h. Minnesota Utility Contractors Association;
i. American Council of Engineering Companies of Minnesota;
j. Minnesota Mechanical Contractors Association;
k. Builders Association of Minnesota;
l. Builders Association of the Twin Cities; and
m. League of Minnesota Cities.

We will also publish the proposed rules, Statement of Need and Reasonableness, and the Notice of Intent to Adopt the Rules on the Department of Labor and Industry's web site.

Our Notice Plan also includes giving notice required by statute. We will mail the Notice of Intent to Adopt the Rules and proposed rule to everyone who has registered to be on the Department's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a. We will also give notice to the Legislature as required by Minnesota Statutes, section 14.116.

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

We will not submit the rules to the state Council on Affairs of Chicano/Latino People pursuant to *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). We did this by sending MMB copies of the documents that we sent to the Governor's Office for review and approval on the same day we sent them to the Governor's office. In a letter dated February 7, 2012, Minnesota Management and Budget stated that the proposed rule amendments will not impose a significant cost on local governments. The letter also stated that local governments and others will be positively impacted by having coordinated State Fire and Building Codes that have adopted new versions of the selected NFPA Standards. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget 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 Building Code is the standard that applies statewide. *Minnesota Statutes*, section 326B.121, subdivision 1, mandates compliance with the State Building 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.

In a memorandum dated February 7, 2012, Ryan Baumtrog, Executive Budget Officer, Minnesota Management and Budget, stated, in part, that "while the amendments could impact methods and technologies involved in the State Building Code, some of the changes may add a cost to a certain device or system while others could reduce cost. Based on the information provided to me, the proposed rule amendments will not impose a significant cost on local governments. Local governments and others will be positively impacted by having coordinated State Fire and Building Codes that have adopted new versions of selected NFPA standards."

Further, the proposed rules merely update certain NFPA Standards that a small business or small city may apply to a new or altered fire protection system. Most costs associated with compliance with the NFPA Standards and the MSBC would be minimal, if any, and passed on from a contractor or installer to the building owner or ultimate consumer, 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 Fire Marshal Division, Department of Public Safety; and
2. Staff of the Construction Codes and Licensing Division, Department of Labor and Industry

RULE-BY-RULE ANALYSIS

1305.0903 [F] SECTION 903, AUTOMATIC SPRINKLER SYSTEMS.

Subp. 5a. [F] Section 903.3.1.

The language in subpart 5a is being amended because the same amendment is a proposed amendment being considered in the MSFC and the NFPA Standards referenced in this rule chapter must coordinate with the same NFPA Standards referenced in the MSFC. The rule language in subpart 5a amends several sections in the current edition of NFPA 13. The proposed changes to

1305.0903, subpart 5a, delete two of the amendments made to section 903.3.1.6.4 in the 2006 IFC, which is incorporated in the MSFC. 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 contained 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.

1305.3500, Chapter 35, REFERENCED STANDARDS.

The language in this rule part is being amended because the same amendment is a proposed amendment being considered in the MSFC and the NFPA Standards referenced in this rule chapter must coordinate with the same NFPA Standards referenced in the MSFC. This rule part is being split into subparts and a new subpart is being added as subpart 1 to provide a list of those NFPA Standards that are being updated and incorporated with this rulemaking. The existing language from this part will be labeled as subpart 2, with a new introductory statement. 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.

1307.0092 REFERENCED CODES, STANDARDS, AND SPECIFICATIONS.

This rule part is being added as a new section to this rule because the same changes are being proposed in the MSFC, and the same NFPA Standards referenced in this rule chapter must coordinate with the NFPA Standards referenced in the MSFC. The MSBC does not, however, currently have an amendment pertaining to NFPA Standard 13 in *Minnesota Rule* chapter 1307, so a new rule part must be created to provide the update to NFPA Standard 13. This amendment is reasonable and necessary because it simplifies and clarifies for the user which publication is incorporated into the rule, but does not make a substantive change to the requirements.

1309.4300 REFERENCED STANDARDS.

This rule part is being added because the same changes are being proposed in the MSFC, and the same NFPA Standards referenced in this rule chapter must coordinate with the NFPA Standards referenced in the MSFC. This rule chapter does not, however, currently have an amendment pertaining to NFPA Standards 13, 58, and 72, so a new rule part must be created to provide the updates to these NFPA Standards. This amendment is reasonable and necessary because it simplifies and clarifies for the user which publication is incorporated into the rule, but does not make a substantive change to the requirements.

1346.1500 CHAPTER 15, REFERENCED STANDARDS.

Subpart 1. This subpart is being amended because the same changes are being proposed in the MSFC, and the same NFPA Standards referenced in this rule chapter must coordinate with the NFPA Standards referenced in the MSFC. This rule part is being amended to incorporate newer versions of NFPA Standards 30A, 58, and 72 into this subpart to coordinate with the same amendments being proposed to the MSFC. This amendment is reasonable and necessary because

it simplifies and clarifies for the user which publication is incorporated into the rule, but does not make a substantive change to the requirements.

1346.5800 CHAPTER 8, REFERENCED STANDARDS.

The language in this rule part is being amended because the same changes are being proposed in the MSFC, and the same NFPA Standards referenced in this rule chapter must coordinate with the NFPA Standards referenced in the MSFC. This language in this rule part is being split into subparts. A new subpart is being added as subpart 1 to provide a list of those NFPA Standards that are being updated and incorporated with this rulemaking. The existing language from this part will be labeled as new subpart 2. 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.

EFFECTIVE DATE.

The proposed effective date was added to the rule to provide the user information about when to begin using the amendments. The effective date of five working days after the publication of the Notice of Adoption in the *State Register* was selected by the Department after considering *Minnesota Statutes,* section 326B.13, subdivision 8, which states:

> Subd. 8. **Effective date of rules.** A rule to adopt or amend the State Building Code is effective 180 days after publication of the rule's notice of adoption in the *State Register*. The rule may provide for a later effective date. The rule may provide for an earlier effective date if the commissioner or board proposing the rule finds that an earlier effective date is necessary to protect public health and safety after considering, among other things, the need for time for training of individuals to comply with and enforce the rule.

The Department determined that an effective date of five working days after the publication of the Notice of Adoption in the *State Register* is the most effective way of protecting the public health and safety. The Department concluded that it must coordinate the effective date with the effective date of the NFPA Standard updates proposed to the MSFC to ensure that code users do not use outdated standards, which in many instances, would force inspection personnel to continue to require, inspect, and enforce outdated fire code requirements. Additionally, the use of outdated standards would force designers to design to fire protection systems with outdated equipment and designs, which, in turn, could result in less efficient systems or devices. Most training materials pertaining to these outdated standards used to train the fire protection industry are becoming more difficult, if not impossible to obtain.

CONCLUSION

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

2-16-2012 KBP

Date

Ken B. Peterson, Commissioner
Department of Labor and Industry