

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment
to the Rules Governing the Adoption of the
2012 International Fire Code, Minnesota
Rules, Chapter 7511

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Department of Labor and Industry and the State Fire Marshall Division of the Minnesota Department of Public Safety (hereafter referred to collectively as the Department) are seeking review and approval of the above-entitled rules pursuant to Minn. Stat. § 14.26 (2014).

On February 18, 2016, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Department under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2015). Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons in the Memorandum that follows,

IT IS HEREBY DETERMINED THAT:

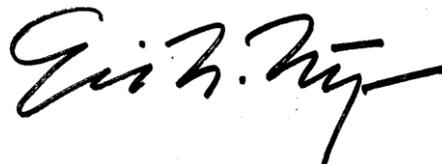
Except as to proposed rule Part 7511.1101.6,

1. The Department has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2015).
3. The record demonstrates the rules are needed and reasonable.

IT IS HEREBY ORDERED THAT:

1. The revisions to Part 7511.1101.6 are **DISAPPROVED**.
2. Except as to proposed rule Part 7511.1101.6, the rules are **APPROVED**.

Dated: February 25, 2016



ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

When undertaking a legal review of proposed rules, the Administrative Law Judge must assess whether the proposed rules comport with applicable legal standards – including prohibitions on grants of undue discretion to government officials.¹

In this case, the Department proposed rule Part 7400.1101.6, which reads:

Protection features in existing buildings that comply with previous editions of the Fire Code or Building Code shall be considered as complying with IFC Chapter II, as amended, **if, in the opinion of the fire code official, such conditions do not constitute a distinct hazard to life.**²

A rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies.³ Discretionary power may be delegated to administrative officers “[i]f the law furnishes a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the operative facts to which the law applies, so that the law takes effect upon these facts by virtue of its own terms, and not according to the whim or caprice of the administrative officers.”⁴

In the view of the Administrative Law Judge, conditioning the applicability of the safe harbor provisions upon the “opinion of the fire code official” renders the rule defective; the law does not take effect upon its own terms.

To cure this defect, the Administrative Law Judge recommends that the language be modified to resolve this problem. Among the possible cures would be to revise the rule so as to confer a “safe harbor” to fire protection features that complied with earlier versions of the Code, except in circumstances where that compliance was countermanded by written findings of the fire code official. Such a revision might read:

Protection features in existing buildings that comply with previous editions of the Fire Code or Building Code shall be considered as complying with IFC Chapter II, as amended, unless the fire code official issues a written determination listing the conditions that constitute a distinct hazard to life.

Requiring a written determination that points to the features of a particular site adds certainty to the rule, removes undue discretion and guides application of the decision-

¹ Minn. R. 1400.2100; see also 1400.2300, subp. 3.

² Ex. C at 89.

³ *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N.W.2d 763, 768 (Minn. 1980).

⁴ *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949); accord *Anderson v. Commissioner of Highways*, 126 N.W.2d 778, 780 (Minn. 1964).

making standards. Additionally, such a revision provides regulated parties with a fair opportunity to challenge any determination that they regard as arbitrary and capricious.⁵

Revising proposed part 7400.1101.6 to clarify the roles and duties of fire code officials when assessing fire protection features, is needed and reasonable and would not be a substantial change from the rules as proposed.

Technical Corrections:

The Administrative Law Judge recommends two technical corrections to the rules for the Department's review and consideration. Technical corrections are not defects in the rules. The suggested corrections are recommendations that the agency may choose to adopt, if it sees fit, to aid in the administration of the rules.

General Definition - Proposed Minn. R. 7511.0202 – Institutional Group I-4:

The Department proposes to modify the definition of day care facilities so as to clarify that such locations are outside of the ordinary residence of the person receiving care. To further clarify this definition, the Administrative Law Judge recommends the following revision:

Group 1-4, Day care facilities. This group shall include buildings and structures occupied by more than five persons of any age who receive custodial care for less than 24 hours per day by persons other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person ~~cared for~~ receiving care.⁶

A revision that clarified this portion of the definition, and harmonized it with text used elsewhere in this rule,⁷ is needed and reasonable and would not be a substantial change from the rules as proposed.

Sprinkler Standards - Proposed Minn. R. 7511.0903, subp. 2a:

The Department proposes to clarify the sprinkler system standards so as to harmonize them with local licensing and registration requirements. To further clarify this rule, the Administrative Law Judge recommends the following revision:

Automatic sprinkler systems installed in state-licensed or state-registered facilities shall be installed in accordance with this code and ~~by the appropriate~~ applicable licensing or registration provisions of Minnesota.⁸

⁵ Minn. Stat § 480A.06, subd. 3 (2014) (“The Court of Appeals shall have jurisdiction to issue writs of certiorari to all agencies, public corporations and public officials”).

⁶ Ex. C at 15.

⁷ See *id.*, at 67, Line 27.

⁸ *Id.* at 38, Lines 8 - 10.

A revision that clarified this portion of the rule, employing terms used earlier in this same rule,⁹ is needed and reasonable and would not be a substantial change from the rules as proposed.

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⁹ See *id.*, at 38, Line 8.