

**STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
STATE FIRE MARSHAL DIVISION**

**In The Matter Of The Proposed Rules Of
The Department Of Public Safety Relating
To Fire Protection (Sprinkler) Systems**

**STATEMENT OF
NEED AND
REASONABLENESS**

General Statement

The proposed rules are intended to assist the Department of Public Safety and State Fire Marshal Division in the administration of Minnesota Statutes, chapter 299M. The proposed rules were developed by the State Fire Marshal Division with the assistance of the Minnesota Advisory Council on Fire Protection Systems. The Council was created and its members were appointed as outlined in Minnesota Statutes, section 299M.02. The Council met eleven times from November 1992 through May 1993. The members of the Council were:

- Robert James, the designee of the Commissioner of Public Safety.
- James Berg, the designee of the Commissioner of Labor and Industry.
- Alan Moy, fire protection contractor.
- Frank Winiecki, fire protection contractor.
- Jerry Laumeyer, journeyman sprinkler fitter.
- James Kelzenberg, journeyman sprinkler fitter.
- Brian Holzer, member of the Minnesota State Fire Chiefs Association.
- Marilyn Arnlund, member of the Fire Marshals Association.
- Orrion Roisen, building official.
- Nona Rardin, public member.

The need for regulating the fire protection industry was outlined in testimony during the passage of Minnesota Statutes, chapter 299M. The proposed rules were developed to administer chapter 299M.

A minimum set of requirements for the fire protection industry is evidenced in the high level of confidence that code regulators have in the capability of fire protection systems to control fire. Fire protection system requirements can be found in at least 25 places in the State Building Code and 12 places in the Minnesota Uniform Fire Code. The requirements range from permission to use a fire protection system as a trade-off for other requirements to requiring a fire protection system as a minimum standard.

The fire protection system industry is regulated in at least fourteen states throughout the nation. Minnesota Statutes, chapter 299M, and the proposed rules have been crafted in line with a model law that was approved and developed by the National Association of State Fire Marshals. Staying consistent with other states and the nation was a top priority.

At the present time many Minnesota jurisdictions have adopted licensing requirements for fire protection system contractors through local ordinances. The local officials have agreed to discontinue licensing upon adoption of these rules. The licensing requirements in these rules are similar to the local ordinances they replace. The rules will provide consistency to licensing and will be enforced in areas of the state not presently covered by local ordinances.

Statutory Authority

The Commissioner of Public Safety has authority to adopt these rules under Minnesota Statutes, section 299M.04, which states:

"The commissioner shall adopt permanent rules for operation of the council; regulation by municipalities; permit, filing, inspection, certificate, and license fees; qualifications, examination, and licensing of fire protection contractors; certification of journeyman sprinkler fitters; registration of apprentices; and the administration and enforcement of this chapter. Fees must be set under section 16A.128. Permit fees must be a percentage of the total cost of the fire protection work."

The Commissioner also has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6, "to promulgate such rules pursuant to chapter 14, as are necessary to carry out the [duties of the Commissioner]."

Small Business Considerations

Minnesota Statutes, section 14.115, requires the Department of Public Safety to consider the effect on small businesses when it adopts rules. The rules will have a direct effect on small businesses that perform fire protection-related work.

Section 14.115, subdivision 2, states in part:

"When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses . . . , the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule."

Specific methods for reducing the impact of the rules on small businesses have been considered throughout the development of the rules. The impact of the rules on small businesses has been reduced as follows:

- a. Less stringent requirements. Part 7512.0800 allows a contractor to continue to perform fire protection-related work for a short time after losing its managing employee. This will allow the contractor time to qualify another person as its managing employee. Part 7512.1800 allows a contractor to use current employees under a limited journeyman certificate. These employees will have to meet less stringent requirements than regular journeymen, but will be limited

to working on the employer's fire protection system. Part 7512.1800 also allows a contractor to use journeymen who have recently come to the state or recently completed apprentice training, but who have not yet passed the examination. Part 7512.1000 sets the insurance and bond coverages to maintain a meaningful level of protection for the public. The levels of coverages chosen also reflect a concern to do this with the least necessary impact on the contractor.

- b. Less stringent schedules. Part 7512.0300 allows established contractors and journeymen to work for two years after the effective date of these rules before they must pass an examination. The extension of this deadline for examination will greatly ease the impact of the implementation of these rules. In the development of part 7512.0800 which allows a contractor to continue to operate for a short time after losing its managing employee, a great deal of consideration was given to setting the time periods for compliance so they would be workable for contractors.
- c. Consolidation or simplification of requirements. Part 7512.1200 allows a contractor to set up a surcharge fee account to prepay these fees. This consolidates the payment of these fees for a contractor so that the contractor does not have to incur the administrative costs of cutting a separate check for each surcharge fee. Under parts 7512.0600, 7512.1500, 7512.1900, and 7512.2200, all licenses, certificates, and registrations expire and must be renewed on the same date. With everybody in the fire protection industry having to renew at the same time, it is less likely that renewals will be forgotten or overlooked.
- d. Performance standards. The rules do not contain design or operational standards.
- e. Exemption. Part 7512.0400, subpart 2, contains a list of exceptions to and exemptions from the rules. Some of these come directly from statute, some are based on the Department's interpretation of the statutes, and some were crafted specifically to reduce the impact of the rules on businesses. These exceptions and exemptions are listed in one place in the rules for the convenience of the reader. Item A recognizes that a supplier of fire protection system parts and equipment was not intended to be covered by these rules. Item B makes clear that persons are exempt from licensing if they only install special agent systems that are not connected to a potable water source. Items D, E, and F allow persons licensed as plumbers, professional engineers, and alarm and communication contractors to perform work covered under their licenses without getting a fire protection contractor license. Item G allows businesses to maintain their own fire protection systems without having to be licensed.

Departmental Charges Imposed By The Rules

In accordance with Minnesota Statutes, section 16A.1285, pertaining to departmental earnings from charges for goods and services, licenses, or regulation, the rules were submitted to the Commissioner of Finance for the Commissioner's review and comment on the charges established or adjusted in these rules. The Commissioner of Finance's comments are attached to this Statement.

In accordance with Minnesota Statutes, section 16A.1285, subdivision 4, paragraph (c), the Department has reported any departmental earnings changes or adjustments to the Chairs

of the Senate Committee On Finance and the House Ways And Means Committee. This was done by sending a copy of the Notice Of Intent To Adopt and the Rules to the Committee Chairs prior to submitting the Notice to the State Register.

Fiscal Impact

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

Agricultural Land Impact

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

Witnesses

If the rules go to a public hearing, the witnesses listed below may testify on behalf of the Department in support of the need for and reasonableness of the rules. The witnesses will be available to answer questions about the development and the content of the rules.

- Thomas Brace, State Fire Marshal, Fire Marshal Division, Minnesota Department of Public Safety, 285 Bigelow Building, 450 North Syndicate Street, St. Paul, Minnesota 55104.
- Robert James, Fire Marshal Division, Minnesota Department of Public Safety, 285 Bigelow Building, 450 North Syndicate Street, St. Paul, Minnesota 55104.
- Dave Orren, Rules Coordinator, Minnesota Department of Public Safety, 316 Transportation Building, 395 John Ireland Boulevard, St. Paul, Minnesota 55155.
- Any other employee of the State Fire Marshal Division or the Minnesota Department of Public Safety.

Rule-By-Rule Analysis

7512.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions of this part apply throughout parts 7512.0100 to 7512.2800.

Subpart 2. **Authority having jurisdiction.** The term "authority having jurisdiction" is used to refer to all code authorities that may be charged with making decisions regarding fire protection systems for their jurisdictions. Note that part 7512.1100, subpart 1, determines who the authority having jurisdiction is in various parts of the state, as this relates to plan review and inspection of fire protection systems.

Subpart 3. **Board member.** This subpart defines the term "board member." The term is an abbreviated way of referring to the persons who govern a contractor that is a corporation or limited liability company.

Subpart 4. **Building code.** Subpart 4 defines building code and references the statute under which the Minnesota State Building Code is adopted. It is necessary to define this term because it is used several times throughout the rules in relation to responsibilities of a contractor, managing employee, and journeyman to supervise and perform work so that it is in compliance with the building code. The definition includes future amendments to the building code. It is reasonable to use the Minnesota State Building Code and to include future amendments because, by the terms of the Minnesota State Building Code, fire protection work in Minnesota must be done in compliance with the building code that is in effect at the time the work is done.

Subpart 5. **Commissioner.** This subpart defines the term "commissioner" as the Commissioner of Public Safety, acting directly or through the State Fire Marshal and other authorized agents. Minnesota Statutes, chapter 299M, and these rules give the Commissioner the authority to administer the laws and rules relating to fire protection systems. Under the law of agency, a person can act directly or through agents who are authorized to act for the person. This definition mentions the State Fire Marshal and other authorized agents for those who might not be aware of the law of agency.

Subpart 6. **Days.** This subpart defines how to calculate time periods measured in days. This is necessary because the rules set out many time periods measured in days. Minnesota Statutes, section 645.15, was used as a model for the wording of this definition.

Subpart 7. **Federal approval agency.** Subpart 7 defines the term "federal approval agency" as the United States Department of Labor, Bureau of Apprenticeship and Training. This is reasonable because this is the only federal agency that currently has authority to register persons in Minnesota who are regularly engaged in learning the sprinkler fitter trade under the direct supervision of a licensed contractor or journeyman.

Subpart 8. **Fire code.** Subpart 8 defines fire code and references the statute under which the Minnesota Uniform Fire Code is adopted. It is necessary to define this term because it is used several times throughout the rules in relation to responsibilities of a contractor, managing employee, and journeyman to supervise and perform work so that it is in compliance with the fire code. The definition includes future amendments to the fire code. It is reasonable to use the Minnesota Uniform Fire Code and to include future amendments because, by the terms of the Minnesota Uniform Fire Code, fire protection work in Minnesota must be done in compliance with the fire code that is in effect at the time the work is done.

Subpart 9. **Fire protection-related work.** This term is an abbreviated way to refer to the list of tasks that a licensed contractor, a certified journeyman, and a registered apprentice may perform under Minnesota Statutes, chapter 299M. Using this term as an abbreviation for a long list of tasks is a reasonable way to make the rules less cumbersome and more easily understood. This term is used in Minnesota Statutes, section 299M.11. The term is not defined in the statutes, but its use is consistent with the definition in subpart 9.

Subpart 10. **Inspect or inspection.** The terms "inspect" and "inspection" have a wide variety of meanings generally and in the fire protection industry. The meanings can range from merely looking at a system as part of everyday maintenance of a building, to checking gauges to see that readings are proper, to carefully examining a system to make sure it will provide adequate fire protection for the configuration and uses of a particular building. Under Minnesota Statutes, section 299M.03, subdivision 1, "a person may not . . . inspect a fire protection system . . . unless annually licensed . . . as a fire protection contractor." The terms "inspect" and "inspection" were not defined in statute. It was clear to the advisory

council that the terms needed to be defined. On the one hand, it was important to not include within the definition everyday tasks that could be performed easily and safely by the owner or maintenance staff of a building. The statute was clearly never intended to require a contractor's license for everyone who might look at a fire protection system. On the other hand, it was important to include those tasks where the expertise of the contractor would be a significant factor in ensuring the proper functioning and ultimate safety of a system. After lengthy discussions, the advisory council felt subpart 10 would be a reasonable way to define "inspect" or "inspection."

Subpart 11. Officer. This subpart defines the term "officer." The term is an abbreviated way of referring to the persons who are charged with the important functions of management of a contractor that is a corporation or limited liability company.

Subpart 12. Owner. This subpart defines the term "owner." The term is an abbreviated way of referring to persons who exert significant control over a contractor by virtue of their ownership interests in the contractor. The term "owner" is defined so that it applies to persons with ownership interests in a sole proprietorship, partnership, corporation, or limited liability company.

The definition of owner includes shareholders of corporations and members of limited liability companies, but only if they hold an interest of five percent or more in the business. These business entities can theoretically have an unlimited number of persons holding ownership interests. It is necessary, as a practical matter, to limit the persons to whom this definition applies. Clearly, majority owners exert significant control over a business. Certain minority owners also exert significant control over a business. Five percent was chosen as the limit because it is used in other situations. The Commissioner has regulated motor vehicle dealers for many years and has used a five percent threshold as the basis for requiring a shareholder of a corporation to be listed on an application. A five percent limit is also used by the Department of Health to define "controlling person" in relation to the regulation of nursing homes and their owners. See Minnesota Statutes, section 144A.01, subdivision 4, paragraph (d).

Subpart 13. Potable water source. Subpart 13 makes clear that a well or city water main are not the only sources of water that would bring a fire protection contractor under the jurisdiction of Minnesota Statutes, chapter 299M, and these rules. There was some concern in developing these rules that a fire protection contractor might argue that the statute and rules did not apply and that a contractor license was not required when the water source for a system was one step removed from a well or water main. This subpart makes clear that a contractor must be licensed when doing fire protection-related work on a system which draws its water from a gravity tank, fire pump, or reservoir or pressure tank.

Subpart 14. State approval agency. Subpart 14 defines the term "state approval agency" as the Minnesota Department of Labor and Industry. This is reasonable because this is the only state agency that currently has authority to register persons in Minnesota who are regularly engaged in learning the sprinkler fitter trade under the direct supervision of a licensed contractor or journeyman.

7512.0200 PURPOSE. Part 7512.0200 states that the purpose of the rules is to regulate persons who provide fire protection-related work and to administer and enforce Minnesota Statutes, chapter 299M. This is consistent with chapter 299M.

7512.0300 SCOPE; EFFECTIVE DATE. The first paragraph of part 7512.0300 refers to Minnesota Statutes, chapter 299M, the statutory chapter behind the rules. This paragraph then restates the subject areas governed by the rules. This list of subject areas is contained

in Minnesota Statutes, section 299M.04, the section that gives the Commissioner the authority to adopt rules regulating the fire protection industry.

The second paragraph of part 7512.0300 states the effective date of the rules and sets out the criteria and time period for contractors and journeymen to qualify for a license or certificate while being exempt from examination.

It is important that fire protection-related work in Minnesota continue without interruption while Minnesota Statutes, chapter 299M, and these rules are implemented. Under the rules, contractors and journeymen will have to pass an examination to qualify for a license or certificate. Without a temporary exemption from the examination, contractors and journeymen would have to stop working until they pass the examination. An exemption is also important for the Fire Marshal in spreading out the administrative work of implementation.

Minnesota Statutes, section 299M.05, exempted certain contractors and journeymen from examination for two years after the effective date of section 299M.05. These are contractors and journeymen who have had a great deal of experience in performing fire protection-related work, sufficient experience to ensure that they are knowledgeable in the fire protection system industry. Part 7512.0300 uses the language of section 299M.05, with the exception that it ties the time period for exemption to the effective date of the rules instead of the effective date of the statute. It is reasonable to use the statutory language in setting out the criteria and amount of time for exemption from examination.

The effective date of these rules will be known only after the rules are approved by the Attorney General or the Administrative Law Judge. At that time, part 7512.0300 will be changed so that the adopted rules set out specific dates rather than criteria and a time period that refer back to the effective date. This will be done to make the criteria and time period more clear.

FIRE PROTECTION CONTRACTOR. PARTS 7512.0400 TO 7512.1200

7512.0400 CONTRACTOR LICENSE REQUIRED; EXCEPTIONS. Minnesota Statutes, section 299M.03, subdivision 1, prohibits a person from performing fire protection-related work as a fire protection contractor unless the person is annually licensed as a fire protection contractor. There are, however, many exceptions listed throughout chapter 299M. There are also exceptions based upon statutory interpretations of chapter 299M. Part 7512.0400 lists these exceptions in one place for the convenience of the reader.

Subpart 1. **License required.** Subpart 1 restates the requirement of section 299M.03 as a lead-in to subpart 2, which lists exceptions to this requirement.

Subpart 2. **Exceptions.** The basis for each exception is discussed separately, as follows:

- A. Minnesota Statutes, chapter 299M, is intended to regulate only those persons in the fire protection industry who design and install the final product. A supplier will not directly impact the final product and is, therefore, not covered by the rules. This exception is mentioned because the question was raised in advisory council discussions and it was suggested that the rules make this exception clear.
- B. Minnesota Statutes, section 299M.01, subdivision 7, defines "fire protection system" as a system that is, among other requirements, "connected to a potable water source."

Under item B, a person does not need a contractor's license to work on a special agent fire suppression system that is not connected to a potable water source. Item B specifically mentions special agent fire suppression systems because these systems use extinguishing agents other than water.

- C. Under item C, building officials, fire officials, and insurance inspectors do not need to be licensed as fire protection contractors. This exception comes from a common sense interpretation of chapter 299M which was clearly meant to regulate those persons who design and install fire protection systems.
- D, E, & F. The exception of item D comes directly from section 299M.01, subdivision 7. The exceptions of items E & F come directly from section 299M.03, subdivision 1. Items D, E, & F allow exceptions to the licensing requirement for persons covered under other statutory licensing programs. If such a person chooses to perform fire protection-related work not covered by the other license, then the person would need to be licensed as a fire protection contractor. This ensures that someone will review the competence of all persons performing fire protection-related work in Minnesota.
- G. A person is not required to be licensed to maintain a fire protection system because "maintain" is not listed as fire protection-related work in chapter 299M. This, however, begs the question of what constitutes "maintain." This issue was discussed at length by the advisory council which approved the wording of item G. Including the scheduled activities to keep a system operable within the definition of "maintain" is reasonable because this is a common meaning of maintain. In recommending that the definition of maintain include emergency repairs, the advisory council considered the situation where an emergency impairment would render a system inoperable. A fire protection contractor is not always available at a moment's notice. If emergency repairs were not included within the meaning of maintain, the situation would almost certainly occur where a person would face the dilemma of either performing emergency fire protection-related work without a license or leaving a system down and a building unprotected until the services of a licensed contractor can be obtained.

7512.0500 INITIAL APPLICATION FOR CONTRACTOR LICENSE.

Subpart 1. Contents of application. Before issuing a contractor license, the Commissioner needs to evaluate an applicant to make sure that the applicant complies with the requirements of Minnesota Statutes, chapter 299M, and these rules. To properly evaluate an applicant, the Commissioner needs to obtain a great deal of information about the applicant. The Commissioner will rely on the contractor license application to obtain the necessary information. Subpart 1 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 1 list the information that must be on an initial application. It is reasonable to list these items together in the rules so that applicants will readily know the requirements of an initial application and so that the Commissioner will have a clearly stated basis for determining whether an initial application is complete.

- A. Item A requires the application to include the name, address, and telephone number of the applicant and each additional name and address that the applicant will use to conduct business. This is so the Commissioner knows the identity of the applicant and how to contact the applicant.
- B. Item B requires that the application indicate the form of business of the applicant. The application must also list each owner, officer, and board member of the applicant. It is important for the Commissioner to know the form of business so the

Commissioner can verify that the applicant's insurance and bond are properly issued. It is important for the Commissioner to know the identity of the owners, officers, and board members of the applicant because these persons control the applicant. The fitness of the applicant to hold a contractor license is directly tied to the fitness of these persons. For instance, if one of these persons is under revocation or suspension, this would disqualify the applicant from obtaining a license.

- C. Item C requires that the managing employee be named on the application. The managing employee is the person who supervises the performance of all fire protection-related work by the contractor. It is important for the Commissioner to know the identity of the managing employee for the same reasons that are listed in item B for the Commissioner to know the identity of the owners, officers, and board members.
- D. Item D requires that the application list the full name, date of birth, and driver's license number of each person named on the application. A person will use his or her name as the primary means to identify him or herself. The birth date will differentiate between persons with the same name. Because a person is permitted to have only one driver's license, a license number will uniquely identify a person who uses variations of a name. The requirement of a driver's license number will also discourage the use of an alias to prevent the Commissioner from knowing an applicant's background. Note that item D allows for other means in lieu of a Minnesota driver's license to uniquely identify a person, because not every person eligible to hold a contractor license also holds a Minnesota driver's license.
- E. Under item E, the application must contain the contractor licensure history of each person named on the application. If a person is ineligible to hold a contractor license because the person is currently under revocation or suspension, this item is designed to elicit that information. Also, if a person has never held a previous license or if a person has had problems with a license before, the Commissioner will know that the person may need more of the Commissioner's time and attention.
- F. Item F requires that the application give the provider's name and the policy number of the applicant's liability insurance. The application must be accompanied by documentation that the insurance meets the requirements of part 7512.1000. The Commissioner needs this information to verify compliance with these requirements.
- G. Item G requires that the application be accompanied by a bond meeting the requirements of part 7512.1000. The Commissioner will review the bond to verify compliance with these requirements.
- H. Item H requires that the application be accompanied by a completed tax information form. This is part of the application because it is required by Minnesota Statutes, section 270.72, subdivision 4, which states:

Subd. 4. **Licensing authority; duties.** All licensing authorities must require the applicant to provide the applicant's social security number and Minnesota business identification number on all license applications. Upon request of the commissioner [of revenue], the licensing authority must provide the Commissioner with a list of all applicants, including the name, address, business name and address, social security number, and business identification number of each applicant."

- I. Item I requires each applicant to provide verification of workers' compensation insurance coverage under Minnesota Statutes, section 176.181, subdivision 2. This is part of the application because of Minnesota Statutes, section 176.182, which requires licensing agencies "to withhold the issuance or renewal of a license . . . to operate a business in Minnesota until the applicant presents acceptable evidence of . . . workers' compensation insurance coverage . . . by providing the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure."
- J. Item J requires that the application be accompanied by a license fee of \$575. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- K. Item K provides a catch-all for the Commissioner to request other information on the application, as necessary to determine whether the applicant meets the requirements of Minnesota Statutes, chapter 299M, and these rules. Item K is included in case any application requirement was overlooked in these rules and in case any requirement is added after the adoption of these rules. This puts the applicant on notice that there may be other things required on the application than those which are specifically set out in this subpart. Item K is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the applicant's eligibility to have a license.
- L. Each person must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure accurate information and to protect persons named on the application from not being informed of all the information contained in the application.

Subpart 2. **Issuing license.** Minnesota Statutes, section 299M.06, gives the Commissioner the authority to issue or to refuse to issue a license. The Commissioner must make a decision after reviewing the initial license application and attached documents. It is important that the Commissioner be consistent in making licensing decisions. Listing the reasons for refusing to issue a license together in the rules is helpful for applicants so they will readily know the requirements that must be met to obtain a contractor license. Further, the Commissioner will have a clearly stated basis for license determinations. The basis for each reason to refuse to issue is discussed as follows:

- A. The Commissioner will refuse to issue a license if the application or items filed with the application are not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the applicant.
- B. The managing employee is the person who supervises the performance of all fire protection-related work by the contractor. It is essential that the contractor's managing employee meet all requirements of a managing employee. If the managing employee did not meet all requirements, there would be no way to ensure that the contractor's fire protection-related work would be properly performed.
- C. Under part 7512.2600, a revoked contractor loses its license and may not hold another license during the revocation period. Under part 7512.2700, a suspended contractor may not perform fire protection-related work during the suspension period. This applies similarly to a managing employee whose certificate is revoked or

suspended. Denying a license to an applicant currently under revocation or suspension is a reasonable way to enforce parts 7512.2600 and 7512.2700.

- D. Under part 7512.2600, an owner, officer, board member, or managing employee of a revoked contractor may not be an owner, officer, board member, or managing employee of another contractor during a revocation. Denying a license based on item D is a reasonable way to enforce this. Note that a person who is not under revocation will be denied a license under item D if another person named on the application is under revocation. This is reasonable because to grant the license would allow the person under revocation to escape the consequences of the revocation. Further, a denial will not impair the eligible person's chances of obtaining a license if the person applies again.
- E. Item E carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing a license if the Commissioner of Revenue notifies us to not issue the license. Section 270.72, subdivision 1, states:
- "Subdivision 1. **Tax clearance required.** The state . . . may not issue, transfer, or renew a license for the conduct of a profession, occupation, trade, or business, if the commissioner [of revenue] notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest.
- F. Item F requires an applicant to meet all the requirements of a contractor set out in Minnesota Statutes, chapter 299M, and these rules before a license is issued. These requirements help ensure that fire protection-related work performed by the contractor is adequate to protect life and property. If the contractor did not meet these requirements, there would be no way to ensure this protection. Item F is reasonable.

7512.0600 CONTRACTOR LICENSE RENEWAL.

Subpart 1. License expiration date. Minnesota Statutes, section 299M.03, subdivision 1, prohibits a person from performing fire protection-related work "unless annually licensed . . . as a fire protection contractor." Section 299M.03 is silent, however, on any further details about the licensing year. Subpart 1 fixes the licensing year from July 1 to the following June 30. The Commissioner considered two alternatives for determining how to "annually license" contractors. One would be to expire a contractor's initial license one year after the date of issuance and to renew annually thereafter on that date. The other alternative was to expire all contractor licenses on the same date every year. These two alternatives were also considered for the annual certification of managing employees and journeymen and the annual registration of apprentices. A fixed licensing year was chosen for ease of administration by the Fire Marshal, who can better schedule support staff needed to complete the task of renewal during this time period and who will be able to more efficiently process many renewal applications all at one time rather than one at a time over the course of the entire year.

Subpart 2. Renewal application. Before renewing a contractor license, the Commissioner needs to make sure that the contractor continues to comply with the requirements of Minnesota Statutes, chapter 299M, and these rules. The information needed to do this is requested on the license renewal application. Subpart 2 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 2 list the information that must be on a renewal application. It is reasonable to list these items together in the rules so that contractors will

readily know the requirements of a renewal application and so that the Commissioner will have a clearly stated basis for determining whether a renewal application is complete.

- A. Item A requests the contractor's name and contractor number. This information is used to identify the contractor.
- B. A renewal application sent to a contractor will have a printout of the contractor information that the Fire Marshal currently has in its data base. Item B requires a contractor to verify that this information is accurate as of the date of renewal. As discussed earlier, contractor information is used by the Fire Marshal to administer contractor licensing. It is important to this task that this information be kept current. The contractor is the only one in a position to easily know whether this information is current and it would put very little burden on the contractor to annually review this information and confirm its accuracy.
- C. Item C requires documentation of workers' compensation insurance coverage for the same reasons this is required on an initial application.
- D. Item D requires that the application be accompanied by a license renewal fee of \$500. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- E. Item E provides a catch-all for the Commissioner to request other information, as necessary to determine compliance with Minnesota Statutes, chapter 299M and these rules. Item E is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the contractor's continuing eligibility to have a license.
- F. One person named on the application is required to sign the renewal application as a means of ensuring that the information on the application is true. The requirement to have one person sign the renewal application is different from the requirement for an initial application in which each person named on the application must sign. By signing the initial application, each person verifies that the information is accurate and truthful. This provides proof that the person exists and that the person swears to the truthfulness of the information on the application. Further, each person is the best one to attest to the accuracy of his or her own name and driver's license number. After the initial application, a single signature is adequate to attest to the accuracy of the information contained on the renewal form. Further, requiring only one person to sign reduces the burden on small businesses which are owned by more than one person.

Subpart 3. Reasons to refuse renewal. A contractor may renew a contractor license by submitting a completed renewal application to the Commissioner. The deadline for this is June 30, which coincides with the date the license expires. Minnesota Statutes, section 299M.03, prohibits a person from performing fire protection-related work unless annually licensed as a fire protection contractor. This prohibition is included in subpart 3 to put contractors on notice of the fact that a renewal license must be issued before a contractor can perform fire protection-related work after June 30; submission of a renewal application by June 30 is not enough.

It is important that the Commissioner be consistent in renewing or refusing to renew a license. Items A to C contain the reasons for refusing to renew a license. Listing the reasons for refusing to renew a license is helpful for contractors so they will readily know

the requirements that must be met and for the Commissioner who will have a clearly stated basis for license determinations.

- A. The Commissioner will refuse to renew a license if the application is not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the contractor.
- B. Under parts 7512.2600 and 7512.2700, a person may not perform fire protection-related work during a revocation or suspension. Refusing to renew a license during a revocation or suspension is a reasonable way to enforce these two parts.
- C. Item C carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing or renewing a license if the Commissioner of Revenue notifies us to this effect.

Subpart 4. Application after lapse. A contractor license expires at midnight on June 30. If the license has not been renewed by this time, it is no longer valid and cannot be renewed. If the person wants to again be licensed as a contractor, the person must apply for another license. Subpart 4 allows the former contractor to use the renewal procedures to obtain another license within one year of lapse. If it is more than a year, the contractor must use the initial license application procedures, including retesting, to obtain another license. The renewal procedures are easier to comply with than the initial application procedures. When a person's contractor license has lapsed only a short period of time, it is reasonable to allow the person to use the renewal procedures to obtain another license because the person's contractor information is recent enough for the Commissioner to rely on. The one-year time period to use the renewal procedures to obtain another license reduces the impact of the rules on contractors.

Subpart 4 states that a person loses all contractor privileges after the expiration of a license and before a new license is granted. It is important to state that privileges are lost during this period so that it is clear that relicensing does not retroactively restore contractor privileges during the lapse.

7512.0700 CHANGE IN CONTRACTOR LICENSE CONDITIONS.

Subpart 1. Notice of change. Information in an initial contractor license application relates to whether the applicant meets all contractor license requirements. The Commissioner needs this information to administer contractor licensing under Minnesota Statutes, chapter 299M. When any of this information changes, it is necessary for the Commissioner to know of the change so the Commissioner can verify that the contractor continues to meet all contractor license requirements. Subpart 1 requires a contractor to notify the Commissioner of any change in contractor information. Contractor information is described as information or items submitted with the contractor initial license application, as amended by a notice of change. A contractor knows its business and a change to the business better than anyone else. It is easy for the contractor to notify the Commissioner of a change. If the contractor would not notify the Commissioner of a change, it would be difficult for the Commissioner to know of the change on a timely basis. It is reasonable to require the contractor to notify the Commissioner of changes to the contractor's business.

Subpart 2. Form of notice. A notice of change must be on a form provided or approved by the Commissioner as a means to ensure consistency. The requirements for a notice of change are as follows:

- A & B. Items A & B require that the notice of change indicate contractor information that has changed and be accompanied by initial license items that have changed. Items A & B carry out the directive subpart 1 which requires a contractor to notify the Commissioner of changes in contractor information.
- C. Under item C, one owner, officer, board member, or managing employee must sign the notice of change, verifying that the information on the notice is true. The requirement to have only one person sign a notice of change is the same as the signature requirement for a renewal application. Note that this is different from the requirement for an initial application in which each person named on the application must sign. See the discussion under item C of part 7512.0600, subpart 2, item F, for the reasons why one signature is sufficient on an application after the initial application.
- D. Item D requires that a notice of change also be signed by any person being removed as an owner, officer, board member, or managing employee, verifying that the person has been removed. The Commissioner may encounter instances where a person is removed as an officer, board member, or managing employee without that person's knowledge. This can cause problems if the person continues to perform fire protection-related work. Requiring this person to sign the notice of change will ensure that the person is aware of being removed. If it is not possible for the person to sign, then the notice of change must contain the reason. In most instances, the person removed will be able and willing to sign the notice of change. If the person has passed away, or is disabled or unavailable, the contractor can meet the requirements of this item by writing the reason on the notice of change. In either case, the contractor can comply with item D with very little burden.

Subpart 3. Timing of notice. Subpart 3 requires a contractor to submit a notice of change so that it is received by the Commissioner before the change occurs. Prior notice is preferred because a change that affects whether the contractor meets all contractor requirements can be addressed by the Commissioner before any problems occur. It is reasonable to require notice before a change in contractor information because the timing of the notice imposes little if any burden on the contractor in addition to that of giving the notice. An exception to the prior notice requirement is made if it is impossible to give prior notice. In this case, notice must be given as soon as is reasonable. The required timing of this notice is reasonable by definition.

Subpart 4. License not transferable. Under Minnesota Statutes, chapter 299M, when a person applies and qualifies for a contractor license, that person is licensed as a contractor. There is no provision in statute for a licensee to transfer a license to another person. It is important to clarify the issue of transferability of a contractor license so that there is no confusion regarding this issue.

The first paragraph of subpart 4 states that a license may not be transferred from one person or organization to another and that another contractor license must be obtained before a successor may perform fire protection-related work. This statement is reasonable because it provides the needed information regarding this issue and it addresses the questions and problems that may arise regarding the issue of transferability of a contractor license. The first paragraph of subpart 4 also states that the successor contractor must have a bond that is separate and distinct from the bond under the original license. A bond is required of all persons licensed as contractors. This requirement is reasonable because separate contractors must have separate bonds.

The second, third, fourth, and fifth paragraphs of subpart 4 address specific questions and problems that the commissioner has encountered in administering the licensing of motor vehicle dealers. The same questions and problems are likely to come up in the licensing of fire protection contractors.

The most common problem related to the nontransferability of a motor vehicle dealer license occurs when an individual or partnership dealer incorporates. Many of these licensees are surprised when they find out that another license must be obtained for a new entity. As will be discussed in the next several paragraphs, a corporation is separate and distinct from its shareholders. The second paragraph of subpart 4 states that a contractor license issued to an individual, partnership, corporation, or limited liability company does not transfer to a new business entity created by a change in the form of ownership of the business. It is reasonable to put contractors on notice that a license does not transfer when there is a change in the form of ownership.

Subpart 4 prohibits a license from being transferred from one organization to another. A license issued to a partnership is issued to the specific group of persons who are partners. When a partner is added or removed, this changes the specific group of person who are partners. The successor partnership is not made up of the identical group of persons to whom the contractor license was originally issued. The third paragraph of subpart 4 is reasonable in stating that a contractor license issued to a partnership is invalid when an original partner leaves or a new partner is brought in.

A corporation is a legal entity in its own right and is separate and distinct from its shareholders. When a corporation is dissolved, it ceases to exist. The property of the corporation is distributed to the creditors and shareholders of the corporation. Since the creditors and the shareholders are separate and distinct from the corporation, a contractor license held by the corporation may not be distributed to the creditors and shareholders. The underlying existence of a corporation, however, is not affected when a shareholder is changed. A contractor license issued to a corporation, therefore, remains valid when a shareholder is changed. Likewise, a change in the name of corporation does not affect the underlying existence of the corporation. Much like any other person, a corporation remains the same entity under the law when its name is changed. The fourth paragraph of subpart 4 is a reasonable way to put contractors on notice of these attributes of a corporation.

A limited liability company is very similar to a corporation in terms of its existence separate and apart from the persons that hold ownership interests in the company. The persons who hold ownership interests in a limited liability company are called "members," as opposed to the term "shareholders" which is used for the persons who hold ownership interests in a corporation. The reasons for the restrictions in paragraph five of subpart 4 are the same as the reasons for the requirements regarding a corporation in paragraph four.

7512.0800 CONTRACTOR'S MANAGING EMPLOYEE REQUIREMENTS. Fire protection contractors are often not individual human beings. Many, if not most, fire protection contractors in Minnesota are corporations. A corporation is a legal entity or legal person, but it has no physical existence. The same is true of a limited liability company. Fire protection-related work, of necessity, must be performed by human persons. The examination for a fire protection contractor must be taken by an individual person. The competence of a contractor will be directly related to the competence of the persons who work for the contractor. The quality of work done by the contractor will be directly related to the person who manages the contractor's business. For these reasons, it is important that an individual person be designated by the contractor to be responsible for the fire protection-related work performed by the contractor. This person is referred to in

these rules as the "managing employee." Part 7512.0800 sets out the requirements for a contractor to employ a managing employee. Parts 7512.1300 to 7512.1600 set out the requirements that a person must meet to be a managing employee.

Subpart 1. Employment of a managing employee. This subpart requires a contractor to employ a managing employee. The managing employee is responsible to supervise all fire protection-related work performed by the contractor. Parts 7512.1200 to 7512.1600 ensure that a managing employee is competent to supervise the performance of fire protection-related work. Subpart 1 ensures that this competent person does in fact supervise this work.

Subparts 2 to 6. Exceptions; conditions for continuing to perform fire protection-related work after losing a managing employee. Since the managing employee is an individual person, there will be instances where the managing employee is no longer competent, terminates employment, or dies. It is necessary to address this situation in the rules and to state how the loss of a managing employee should affect a contractor's ability to perform fire protection-related work.

The Advisory Council discussed this situation at length. Two main alternatives were considered. One was to require the contractor to shut down until it employed another person who met the requirements of a managing employee. The Advisory Council did not favor this alternative because it would likely cause a big disruption in the contractor's business, which in turn would cause a disruption for the contractor's employees and the contractor's customers. For a large contractor that had more than one person on staff who could meet the requirements of a managing employee, the disruption would be only as long as it would take the contractor to notify the Commissioner and the Commissioner to review and approve the qualifications of the proposed managing employee. For a contractor that did not have any other persons on staff who could step in as a managing employee, the disruption could be lengthy and expensive.

The Advisory Council preferred another alternative that would allow the contractor to continue working for a limited period of time, while at the same time requiring measures that would ensure that the contractor's fire protection-related work was properly performed. This would minimize the disruption caused by losing the managing employee.

To ensure that the contractor's work will be properly performed, the rules will require the following:

- The contractor must notify the Commissioner within three days after the contractor loses its managing employee. Members of the Advisory Council who are contractors felt that this was a workable amount of time that would not impose an undue hardship on the contractor.
- For a period of fourteen days after losing its managing employee, the contractor could continue to work if the contractor notifies the Commissioner and if the contractor supervises its work to ensure that it is properly performed. This is reasonable because the plans for most work performed during this period would have been reviewed and approved by the former managing employee and the work will be performed by certified journeymen and registered apprentices. Further, the notice to the Commissioner ensures that the Commissioner will be able to review and scrutinize the contractor's work more closely than usual. Finally, the work is subject to inspection before it is put into service.

- Within fourteen days of losing its managing employee, the contractor would have to designate a person as acting managing employee. This person would have to meet the qualifications to take the managing employee examination and would have to apply to take the next such examination. There would also have to be a good likelihood that this person would pass the managing employee examination. If the contractor and its designated acting managing employee meet these conditions, the contractor can continue to work until seven days after the results of the next managing employee examination. These measures provide a reasonable degree of assurance that a competent person is supervising the contractor's work. This level of assurance is not as good as it would be if the acting managing employee had already passed the examination, but the benefits of minimizing the disruption to the contractor's business, employees, customers outweigh this detriment.
- The grace period for a contractor to work without a fully qualified managing employee ends seven days after the results are issued for the next managing employee examination. Under the best of circumstances, the acting managing employee will pass the examination and the contractor will then be in full compliance with the requirement to have a managing employee. Under the worst of circumstances, the acting managing employee will fail the examination and the contractor will have seven days to find a fully qualified managing employee or shut down operations. The exceptions to the managing employee requirement were intended to minimize the disruptions caused by the loss of a managing employee, not to create a permanent loophole that would undermine the assurances of competent and quality fire protection-related work. It is reasonable and appropriate to limit the exceptions to a period of time during which the contractor has the opportunity to fully qualify an employee to become a managing employee.

Note that this exception only applies to a contractor that already holds a license and that has proven competence by meeting the initial qualifications for a contractor license. The Advisory Council felt it was important that this exception not be construed to apply to a contractor that had never met the initial qualifications. Otherwise this would open a loophole for incompetent or unqualified contractors to become licensed.

7512.0900 CONTRACTOR OPERATING REQUIREMENTS.

Subpart 1. **Posting of license.** Subpart 1 requires a contractor to display its contractor license at the contractor's place of business. Subpart 1 also requires a contractor to display its contractor license number on all bids, proposals, offers, and installation drawings for fire protection systems. Both of these requirements give persons who deal with the contractor assurance that the contractor is qualified and is properly licensed as a fire protection contractor. These persons include the general public who might be the contractor's customers. These persons also include authorities having jurisdiction who are called on to inspect or review the contractor's fire protection-related work. When a contractor has met the requirements of Minnesota Statutes, chapter 299M, and these rules, the State Fire Marshal will issue the contractor a license and a contractor number that is unique to the contractor. The license and the contractor number indicate that the contractor is qualified to perform fire protection-related work. It is reasonable to require the contractor to display its license and contractor number because this is easy for the contractor to do and because it gives assurance to persons that the contractor is qualified and properly licensed. Further, these requirements are similar to requirements under other statutory licensing programs.

Subpart 2. **Compliance with codes.** The fire code and the building code set standards for the installation and maintenance of fire protection systems. The fire code and the building

code themselves require compliance with these standards. Subpart 2 repeats the requirement that work performed by a contractor must be in compliance with the fire code and the building code. Including this in the rules makes it possible to suspend or revoke a contractor license for substandard work. Minnesota Statutes, chapter 299M, and these rules are intended to provide an adequate and reliable level of competency by persons who perform fire protection-related work. Subpart 2 is a reasonable way to accomplish this intent because it will put a contractor's license at risk of suspension or revocation for substandard work.

Subpart 3. Contractor employees. Minnesota Statutes, section 299M.03, prohibits a person from performing fire protection-related work unless the person is annually licensed as a contractor, certified as a journeyman, or registered as an apprentice. In the development of these rules, the position of managing employee was created to be the human being who represents the contractor. Subpart 3 restates the requirements of section 299M.03, but includes the term "managing employee" instead of "contractor" because this person acts on behalf of the contractor. Subpart 3 makes it the responsibility of the contractor to ensure that the contractor's work is performed in compliance with this. It is reasonable that a licensed contractor comply with statutory requirements as a condition of holding the license.

Subpart 4. Supervision of apprentices. Minnesota Statutes, section 299M.01, subdivision 2, states in pertinent part: "'Apprentice sprinkler fitter' means a person . . . who is regularly engaged in learning the trade under the direct supervision of a . . . contractor or journeyman . . ." (emphasis added) The term "direct supervision" is not defined in chapter 299M. The advisory council reviewed this language and felt that this term needed to be addressed in greater detail. This detail is provided to assist the State Fire Marshal and the authority having jurisdiction with enforcing the requirement that an apprentice must be directly supervised. Clearly, the underlying intent of the requirement of direct supervision was to ensure that an apprentice is working in an environment that is educational and safe and that the apprentice properly perform fire protection-related work.

Subpart 4 repeats the requirement of section 299M.01, subdivision 2, by requiring that an apprentice be under the direct supervision of a contractor (in the person of the managing employee) or a journeyman. Subpart 4 makes this the responsibility of the contractor to ensure that this supervision occur. It is reasonable for a contractor to ensure that its employees do their jobs, including complying with statutory requirements. The responsibilities that make up direct supervision are set out in items A to C.

- A. Item A requires that the apprentice's work be reviewed by the supervisor. This is reasonable because without knowing what the apprentice was doing and how the apprentice was doing it, the supervisor would be unable to provide any meaningful supervision.
- B. Item B requires the supervisor to be on the job site and available at any time the apprentice is working. This is a reasonable interpretation of the meaning of the word "direct." The advisory council thought that anything less 'direct' (such as availability for consultation by telephone) would not provide adequate supervision.
- C. Item C requires the supervisor to determine that the apprentice's final product complies with the fire code and the building code. The supervisor (a managing employee or journeyman) has been engaged in the sprinkler fitter trade for a substantial amount of time and has demonstrated competence in the trade by passing an examination. The apprentice is learning the trade and has not demonstrated

competence by passing an examination. It is reasonable to require a competent person to determine that an apprentice's work complies with code.

7512.1000 INSURANCE AND BOND. The statutory authority for these rules, Minnesota Statutes, section 299M.04, directs the Commissioner to adopt rules governing the qualifications of fire protection contractors. There is no place in chapter 299M that specifically states contractor qualifications should include insurance and bond requirements. However, in section 299M.07, it states: "A municipality may not require licensing, certification, registration, bonding, or insurance that is in addition to the state requirements outlined under this chapter." Several members of the advisory council were active in the legislative process that led to the adoption of these rules. These advisory council members stated that one of the purposes of chapter 299M was to have a single licensing agency in Minnesota for licensing fire protection contractors and to have only one insurance requirement and one bond requirement instead of separate requirements for each jurisdiction in which a contractor might work. It appears that the Legislature intended that the qualifications of fire protection contractors include insurance and bond requirements.

It is important that a contractor have insurance in a sufficient amount to cover personal injuries and property damage that might occur if a fire protection system fails to properly perform. Likewise, it is important that a contractor have a bond in a sufficient amount to cover financial loss caused by failure to perform as required under a contract. Presently all local municipalities that license fire protection contractors require insurance and a bond prior to licensing. Part 7512.1000 will continue the practice statewide. Insurance and bond requirements are common in most contractor licensing statutes and rules in Minnesota.

Subpart 1. **Insurance.** Items A to F set out the requirements for a contractor's insurance coverage.

- A. The policy must include products and completed operations coverage. This is reasonable because it covers persons who are injured by a fire protection system that a contractor has worked on or by failure of such a system.
- B. Item B sets the policy limits for a contractor's insurance coverage. The advisory council discussed this issue at length. It was felt that a substantial amount of coverage was needed because injuries and damage due to fire can be severe. If a fire occurs in whole or in part because of the failure of a fire protection system, the damages for personal injuries and loss of property are potentially substantial. The policy limits stated in item B were arrived at because the advisory council felt these coverages would cover the potential risks, and at the same time would be affordable for fire protection contractors.
- C. Item C makes clear that the policy be conditioned to pay damages because of personal injury or property loss caused by an occurrence involving the contractor. This is reasonable because the purpose of requiring insurance is to cover damages caused by the contractor.
- D. Item D ensures continuous insurance coverage will be in force during the time the license is valid. It is important that a licensed contractor have proper insurance coverage at all times.
- E. Item E requires that the insurance company is authorized to do business in Minnesota so the Commissioner can rely on the safeguards that the State Department of Commerce provides with its review of insurance companies. This item is

reasonable to assist the Commissioner and should not create a burden on the contractor who is interested in doing business in Minnesota.

- F. This item is necessary to monitor and ensure that a licensed contractor continues to maintain insurance that meets these requirements. If a change is made to the insurance, the Commissioner will have time to review the change to either verify that the insurance still meets requirements or to notify the contractor to cease performing fire protection-related work as of the date the insurance no longer meets requirements. Note that under part 7512.2600, subpart 2, a contractor license will be revoked if the contractor performs fire protection-related work when the insurance does not meet requirements.

Subpart 2. Bond. The requirements for a bond ensure that if a problem occurs involving the installation of a fire protection system, the person who purchased the system will be able to have the installation completed to fire code and building code standards. Items A to E set out the requirements for a contractor's bond.

- A. Item A sets the amount of the bond at \$30,000. The advisory council discussed this issue at greater length than it discussed insurance coverage amounts. It was felt that a substantial bond was needed to protect against fly-by-night operations that might not have sufficient assets to properly perform fire protection-related work. Some members of the task force argued for a \$50,000 bond. The factor that convinced the State Fire Marshal to propose setting the bond at \$30,000 was the burden on the contractor of obtaining such a bond. The burden was not so much the cost of the premium for the bond, as it was the fact that the contractor would need sufficient collateral to back the bond. The \$30,000 amount was an attempt to balance the benefits and the burdens of the bond.
- B. Item B makes clear that the bond be for the benefit of persons injured or suffering financial loss by reason of failure of performance. This is reasonable because the purpose of requiring a bond is to cover these types of financial losses.
- C. Item C ensures that the bond will be in force continuously during the time the license is valid. It is important that a licensed contractor have a proper bond at all times.
- D. Item D requires that the bond be written by a corporate surety licensed to do business in Minnesota so that the Commissioner can easily contact the bonding company. If the contractor uses a cash bond or an irrevocable line of credit, the Commissioner will retain this and will make it available if needed. This item is reasonable to help ensure that finances are available to provide a complying fire protection system if a contractor fails to do so under the contract. This should not create a burden on the contractor who is interested in doing business in Minnesota.
- E. This item is necessary to monitor and ensure that a licensed contractor continues to maintain a bond that meets these requirements. If a change is made to the bond, the Commissioner will have time to review the change to either verify that the bond still meets requirements or to notify the contractor to cease performing fire protection-related work as of the date the bond no longer meets requirements. Note that under part 7512.2600, subpart 2, a contractor license will be revoked if the contractor performs fire protection-related work when the bond does not meet requirements.

Subpart 3. Failure to have insurance or bond. With the limited exceptions set out in subpart 4, a contractor may not perform fire-protection related work if the contractor does not have the required insurance and bond. The purpose of the insurance is to cover

personal injuries and property damage that might occur if a fire protection system fails to properly perform. The purpose of a bond is to cover financial loss caused by failure to perform as required under a contract. It is reasonable to require the contractor to stop working when the contractor does not have insurance or a bond because this will minimize the contractor's exposure to liability and bond claims during this period of non-coverage.

Subpart 4. Exceptions to insurance or bond requirements. The exceptions of subpart 4 are meant to apply to companies who obtain a contractor license for the purpose of working on fire protection systems that protect buildings owned by the company or leased by the company for a period of at least one year. The companies that would do this would likely be large companies that have special fire protection needs to protect expensive equipment or hazardous manufacturing processes. These companies would almost certainly have insurance coverage for liability to protect their own business and financial interests. It is not reasonable to require extra insurance because such a company has also qualified as a contractor.

The purpose of the bond is to protect a contractor's customers from financial loss due to the contractor's failure under a contract. A bond is not necessary when a contractor works on its own property because, first of all, there is no contract and, second of all, the contractor is its own customer; it is in the contractor's own financial interest to do the work properly.

7512.1100 PERMIT. Minnesota Statutes, section 299M.04, directs the Commissioner to "adopt permanent rules for . . . permit, filing, inspection, certificate, and license fees" There is no place in chapter 299M that specifically states the Commissioner can require and issue permits for fire protection work. However, other sections within chapter 299M and related legislation clearly indicate the Legislature intended that the Commissioner require and issue permits within certain areas of the state.

Section 299M.07 allows a municipality by ordinance to require permit fees for competent inspection of fire protection systems and requires a municipality to notify the Commissioner if it enacts such an ordinance after the effective date of section 299M.07. Section 299M.07 makes it clear that the Legislature intended to allow a municipality to require permits if the municipality chose to do so and if its inspection was competent. The requirement to notify the Commissioner upon enactment of such an ordinance implies that the Legislature contemplated that the Commissioner would require and issue permits in all areas of the state, except those areas where a municipality gave notice that it was going to do this within the its own jurisdiction.

Chapter 299M was enacted in Minnesota Laws 1992, chapter 508. Section 13 of chapter 508 contained an appropriation and an addition of two positions to the complement of the Department for the purposes of chapter 508. The appropriation and addition to the complement was for the administration of the contractor licensing and journeyman certification program, but also to implement a permit program for plan review and inspection of fire protection systems (throughout the state, except in those areas covered by a municipal permit program).

Subpart 1. Authority having jurisdiction; permit requirements. This subpart delineates who the authority having jurisdiction (AHJ) is in various parts of the state, as this relates to plan review and inspection of fire protection systems. Subpart 1 puts into rules language the conclusions based on the analysis of chapter 299M and related legislation regarding permits for plan review and inspection of fire protection work. In areas of the state where a municipality provides a competent inspection, the municipality is the AHJ. In all other areas of the state, the Commissioner is the AHJ. Subpart 1 also states that a contractor

must obtain a permit to perform fire protection-related work when required by the AHJ. This requirement comes directly from section 299M.07, as it applies to a municipality. This requirement is based on the above analysis, as it applies to the Commissioner. Subpart 1 is reasonable because it is based on a reasonable interpretation of chapter 299M and related legislation.

Subparts 2 and 3. Cost of fire protection system; Permit fee. Minnesota Statutes, section 299M.04, in addition to directing the Commissioner to adopt these rules, states in part: "Permit fees must be a percentage of the total cost of the fire protection work." Permit fees will be charged under subpart 3 at the time of applying for a permit. For larger projects where the contract is let on bids, the permit will be applied for prior to performing fire protection-related work. For smaller projects, the work may be ordered and completed in one day and the permit will be applied for within a reasonable time after completing the project. If the permit is obtained prior to performing the work, the cost of the work can only be estimated. It is reasonable to require the contractor to give the estimated cost when applying for a permit because this may be the only information available at that time. Subpart 2 requires the contractor to give the actual cost at the time of the final inspection test. This is a reasonable time to do this because the work is completed and the actual cost can be calculated. Further, the final inspection test is conducted by the AHJ so the contractor can give the estimated cost to the AHJ at that time.

For the reasons that a contractor must give the estimated cost at the beginning of the work and the actual cost after completion, the contractor is required to pay an estimated permit fee at the beginning of the work and any additional fee after completion. The fee set by subpart 3 is 1.2% of the cost of the fire protection system. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.

7512.1200 SURCHARGE. Minnesota Statutes, section 299M.11, subdivision 4, states: "Before beginning fire protection-related work, a fire protection contractor shall pay a project surcharge fee to the commissioner based on a percentage of the total costs of the fire protection-related work."

Subpart 1. Surcharge fee. The surcharge fee set by subpart 1 is two tenths of one percent. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.

Subpart 2. Fee payment schedule. Section 299M.11, subdivision 4, requires payment of the surcharge fee "before beginning fire protection-related work." For large projects where the contract is let on bids, it is feasible to pay the surcharge fee before beginning work because the contractor will apply for a permit before beginning work. For smaller projects, it is not feasible to pay the surcharge fee before beginning work because such a requirement would often cause a delay in the start of the project until the fee was paid. The state would only gain a small benefit by getting the surcharge fee prior to the beginning of a small project as opposed to at the final acceptance test. Requiring the payment of the fee prior to beginning a small project would often impose a large burden on the contractor and the contractor's customer. It is a small business consideration to allow a later payment of the surcharge fee for small projects. Items A and B state the timing requirements for paying the surcharge fee for large and small projects, respectively.

Subpart 3. Surcharge fee account. Under subpart 3, a prepaid surcharge fee account can be started with the Commissioner with an amount of money to cover the surcharge fee required to be paid on small projects. A contractor can use this account to cover surcharge

fees without having to send in a separate payment with every project. This is a reasonable way to assist small businesses and outstate contractors in providing a system for them to meet the requirements of the surcharge fee at a lower cost to their business.

MANAGING EMPLOYEE. PARTS 7512.1300 TO 7512.1600

7512.1300 MANAGING EMPLOYEE EXAMINATION.

Subpart 1: Application for examination. Before allowing someone to take a managing employee examination, the Commissioner needs to evaluate an applicant to make sure that the applicant complies with the requirements of Minnesota Statutes, chapter 299M, and these rules. To properly evaluate an applicant, the Commissioner needs to obtain a great deal of information about the applicant. The Commissioner will rely on the application for examination to obtain the necessary information. Subpart 1 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 1 list the information that must be on the application. It is reasonable to list these items together in the rules so that applicants will readily know the requirements of an application and so that the Commissioner will have a clearly stated basis for determining whether an application is complete.

- A. Item A asks for information about the identity of the applicant. The reasons for requiring this information are the same as for requiring information about the identity of contractor applicants, as discussed under part 7512.0500, subpart 1, item D.
- B. Item B asks for the history of contractor licensure or managing employee certification of the applicant. The reasons for requiring this information are the same as for requiring information about the history of contractor applicants, as discussed under part 7512.0500, subpart 1, item E.
- C. Subpart 2 lists the qualifications a person must have to take the managing employee examination. Item C requires documentation that the applicant meets these qualifications. The Commissioner needs this information to determine whether to allow the applicant to take the examination. It is reasonable to ask the applicant to provide this information because the applicant is the only person who would likely have this information.
- D. Item D requires that the application be accompanied by a completed tax information form. This is part of the application because it is required by Minnesota Statutes, section 270.72, subdivision 4.
- E. Item E provides a catch-all for the Commissioner to request other information on the application, as necessary to determine whether the applicant meets the requirements of these rules. Item E is included in case any application requirement was overlooked in these rules and in case any requirement is later added. This puts the applicant on notice that there may be other things required on the application than those which are specifically set out in this subpart. Item E is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the applicant's eligibility to be a managing employee.
- F. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 2. Qualifications for examination. To take the managing employee examination, a person must submit a completed application. It is reasonable to require that the application be completed so that the Commissioner can make a decision based on all the information about the applicant. A person must qualify to take the managing employee examination. This requirement ensures that all persons taking the examination will have a level of experience or training appropriate for a person responsible for supervising a contractor's fire protection-related work. If this minimum level of experience or training was not required, the difficulty of the examination would have to be increased and a practical examination would have to be developed at a much greater cost. Items A to C are discussed as follows:

- A. Item A allows a person with a minimum of 10,000 hours of experience in design, installation, modification, or inspection to take the managing employee examination. It was the opinion of the advisory council that a journeyman sprinkler fitter with this amount of experience would be qualified to supervise a contractor's fire protection-related work.
- B. Item B allows a person to take the managing employee examination if the person holds a NICET Level III or IV certification in the field of fire protection, and in the subfield of automatic sprinkler system layout. The needed level of exposure to information that is required to be a managing employee is contained in the requirements to reach a NICET Level III.
- C. Item C allows a person who is a licensed professional engineer and who is competent in fire protection system design to qualify to take the managing employee examination. The duties of a managing employee in supervising fire protection-related work will go beyond the responsibilities of a person's engineer license. However, the engineers who qualify to take the managing employee examination will likely have obtained the necessary knowledge during their work as an engineer on fire protection system design.

During the course of advisory council discussions regarding qualifications for the managing employee examination, it was suggested that a person holding a NICET Level III or above be exempt from taking the examination. It was decided that the examination will be required of a person holding a NICET Level III to ensure that the person has been exposed to all aspects of the fire protection industry and to ensure that Minnesota statutes and rules have been researched. It is reasonable to require all persons to pass an examination to become a managing employee. The purpose for requiring all persons to pass an examination is to develop a minimum threshold of knowledge and to require that all contractors be held to the same level of competency. This requirement is reasonable because of the various backgrounds of professionals who will apply to take the managing employee examination.

7512.1400 MANAGING EMPLOYEE CERTIFICATE.

Subpart 1. Issuing certificate. To be issued a managing employee certificate, a person must first be designated as a managing employee by a contractor. This is reasonable since the managing employee will be the human being acting on behalf of the contractor and responsible for the supervision of the contractor's fire protection-related work. The Commissioner must make a decision on issuing a certificate after reviewing the application for examination and other documents and records related to the persons qualifications to be a managing employee. It is important that the Commissioner be consistent in making certification decisions. Listing the reasons for refusing to issue a managing employee

certificate together in the rules is helpful for applicants so they will readily know the requirements that must be met to obtain a certificate. Further, the Commissioner will have a clearly stated basis for certificate determinations. The basis for each reason to refuse to issue is discussed as follows:

- A. Under item A, a person must either pass the managing employee examination or be exempt from passing the examination under part 7512.0300. It is reasonable to require a person to pass the managing employee examination before being issued a certificate to ensure that the person is knowledgeable in the fire protection system industry. Part 7512.0300 sets out conditions for obtaining a certificate without examination. The discussion in this document under part 7512.0300 gives the reasons for the two year exemption period and why persons so exempted are knowledgeable in the fire protection system industry.
- B. This item was written in contemplation of subpart 2, under which a list of qualified managing employee candidates is created. It may be a substantial period of time after passing the examination that a person is designated by a contractor as a managing employee. Requiring the person to meet all continuing education requirements since passing the examination ensures that the person has stayed current with the advances in the fire protection industry that have occurred since the person passed the examination.
- C. A person cannot be a managing employee if the person is not an employee in the first place.
- D. It is reasonable to refuse to issue a certificate to a person who is currently the managing employee for another contractor, because one person cannot legitimately supervise the fire protection-related work of two separate companies. The concern was raised by the advisory council that a person acting for more than one contractor would cause confusion and create the likelihood that the person would not provide adequate monitoring of the fire protection-related work of both contractors. It is reasonable to have the designated managing employee working for only one company because of the great amount of responsibility placed on this person.
- E. It is reasonable to not issue a certificate to a person during the period the person is under revocation or suspension. To do otherwise would render meaningless the penalties for revocation or suspension.
- F. Item F carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing a certificate if the Commissioner of Revenue notifies us to not issue the certificate.
- G. Item G requires an applicant to meet all the requirements of a managing employee set out in these rules before a certificate is issued. These requirements help ensure that fire protection-related work supervised by the managing employee is adequate to protect life and property. If the managing employee did not meet these requirements, there would be no way to ensure this protection. Item G is reasonable.

Subpart 2. List of qualified managing employee candidates. Under subpart 2, the Commissioner will maintain a list of persons who pass the managing employee examination, but who are not designated as a managing employee by a contractor. A person on the list must fulfill all continuing education requirements. Subpart 2 was written so a contractor could plan ahead to minimize the disruption caused by the always possible loss of a managing employee. If the contractor had another employee who met all the

criteria to be a managing employee (most importantly one who has passed the examination), then the contractor could immediately designate this person upon the loss of the contractor's managing employee. Subpart 2 is a reasonable small business consideration because it minimizes the impact of the rules on a contractor's business in the event the contractor loses its managing employee.

7512.1500 MANAGING EMPLOYEE CERTIFICATE RENEWAL.

Subpart 1. Certificate expiration date. The certificate expiration date is June 30 of each year to be consistent with the renewal period for contractors, journeymen, and apprentices. See the discussion under part 7512.0600, subpart 1, for the reasons the contractor licensing year was set from July 1 to the following June 30.

Subpart 2. Renewal application. Before renewing a managing employee certificate, the Commissioner needs to make sure that the managing employee continues to comply with the requirements of these rules. The information needed to do this is requested on the renewal application. Subpart 2 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 2 list the information that must be on a renewal application. It is reasonable to list these items together in the rules so that managing employees will readily know the requirements of a renewal application and so that the Commissioner will have a clearly stated basis for determining whether a renewal application is complete.

- A. Item A requests the managing employee's name and managing employee number. This information is used to identify the managing employee.
- B. A renewal application sent to a managing employee will have a printout of the managing employee's address, telephone number, and driver's license number. Item B requires a managing employee to list any changes to this information. This information is used by the Fire Marshal to administer managing employee certification and it is important to this task that this information be kept current. The managing employee readily knows this information and it puts very little burden on the managing employee to update this information.
- C. Item C asks the managing employee to supply documentation showing the managing employee has met the continuing education requirements of subpart 5. The Commissioner has no means to get lists of all continuing education training conducted in the country. The managing employee should have this information easily and readily available. Item C is a reasonable way for the Commissioner to verify compliance with subpart 5.
- D. Item D requires that the application be accompanied by a certificate renewal fee of \$75. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- E. Item E provides a catch-all for the Commissioner to request other information, as necessary to determine compliance with these rules. Item E is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the managing employee's continuing eligibility to have a certificate.
- F. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 3. Reasons to refuse renewal. A managing employee may renew a managing employee certificate by submitting a completed renewal application to the Commissioner. The deadline for this is June 30, which coincides with the date the certificate expires. Subpart 3 puts managing employees on notice of the fact that a renewal certificate must be issued before a managing employee can perform fire protection-related work after June 30; submission of a renewal application by June 30 is not enough.

It is important that the Commissioner be consistent in renewing or refusing to renew a certificate. Items A to D contain the reasons for refusing to renew a certificate. Listing the reasons for refusing to renew a certificate is helpful for managing employees so they will readily know the requirements that must be met and for the Commissioner who will have a clearly stated basis for certificate determinations.

- A. The Commissioner will refuse to renew a certificate if the application is not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the managing employee.
- B. Subpart 5 requires a managing employee to attend continuing education courses. Refusing to renew a certificate is a reasonable way to enforce this requirement.
- C. Part 7512.0300 allows a person to obtain a managing employee certificate without passing the managing employee examination. Under part 7512.0300, a person who obtains a certificate without passing the examination must either pass the examination within two years or surrender the certificate. Item C is consistent with part 7512.0300 by denying renewal to such a person who has not passed the examination within the two year exemption period.
- D. Under parts 7512.2600 and 7512.2700, a person may not perform fire protection-related work during a revocation or suspension. Refusing to renew a certificate during a revocation or suspension is a reasonable way to enforce these two parts.
- E. Item E carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing or renewing a certificate if the Commissioner of Revenue notifies us to this effect.

Subpart 4. Application after lapse. A managing employee certificate expires at midnight on June 30. If the certificate has not been renewed by this time, it is no longer valid and cannot be renewed. To get another managing employee certificate, the person must apply for one. Subpart 4 allows the former managing employee to use the renewal procedures to obtain a new certificate within one year of lapse. If it is more than a year, the managing employee must use the initial certificate application procedures, including retesting, to obtain a new certificate. The renewal procedures are easier to comply with than the initial application procedures. When a person's managing employee certificate has lapsed only a short period of time, it is reasonable to allow the person to use the renewal procedures to obtain another certificate because the person's managing employee information is recent enough for the Commissioner to rely on. The one-year time period to use the renewal procedures to obtain another certificate reduces the impact of the rules on managing employees.

Subpart 4 states that a person loses all managing employee privileges after the expiration of a certificate and before a new certificate is granted. It is important to state that privileges

are lost during this period so that it is clear that getting a new certificate does not retroactively restore managing employee privileges during the lapse.

Subpart 5. Continuing Education. It is important that managing employees stay abreast of new technologies in fire protection systems and of changes to laws and rules. It is a good business practice for a contractor to have its employees keep up on developments in fire protection systems and it will put little if any burden on contractors to have their managing employees attend ten hours of continuing education courses a year.

7512.1600 CARD REQUIREMENT. It is necessary that the commissioner and the authority having jurisdiction have a means to verify that persons found at a job site performing fire protection-related work are qualified. This is important to the administration of the program and to carrying out its intent to protect life and property from fire. Part 7512.1600 requires a managing employee to carry a managing employee card and a picture identification card while working as a managing employee. This requirement is reasonable because it places very little burden on the managing employee and because it is common to the construction trades.

JOURNEYMAN SPRINKLER FITTER. PARTS 7512.1700 TO 7512.2000

7512.1700 JOURNEYMAN SPRINKLER FITTER EXAMINATION.

Subpart 1. Application for examination. Before allowing someone to take a journeyman examination, the Commissioner needs to evaluate an applicant to make sure that the applicant complies with the requirements of Minnesota Statutes, chapter 299M, and these rules. To properly evaluate an applicant, the Commissioner needs to obtain a great deal of information about the applicant. The Commissioner will rely on the application for examination to obtain the necessary information. Subpart 1 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 1 list the information that must be on the application. It is reasonable to list these items together in the rules so that applicants will readily know the requirements of an application and so that the Commissioner will have a clearly stated basis for determining whether an application is complete.

- A. Item A asks for information about the identity of the applicant. The reasons for requiring this information are the same as for requiring information about the identity of contractor applicants, as discussed under part 7512.0500, subpart 1, item D.
- B. Subpart 2 lists the qualifications a person must have to take the journeyman examination. Item B requires documentation that the applicant meets these qualifications. The Commissioner needs this information to determine whether to allow the applicant to take the examination. It is reasonable to ask the applicant to provide this information because the applicant is the only person who would likely have this information.
- C. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 2. Qualifications for examination. To take the journeyman examination, a person must submit a completed application. It is reasonable to require that the application be completed so that the Commissioner can make a decision based on all the information

about the applicant. A person must qualify to take the journeyman examination. This requirement ensures that all persons taking the examination will have a level of experience or training appropriate for a person who will perform fire protection-related work and who may supervise apprentices. If this minimum level of experience or training was not required, the difficulty of the examination would have to be increased and a practical examination would have to be developed at a much greater cost. Items A and B are discussed as follows:

- A. Item A allows a person with a minimum of 8,000 hours of experience in performing fire protection-related work to take the journeyman examination. This is the number of hours needed to complete an apprentice sprinkler fitter program. It was the opinion of the advisory council that a person should have at least this amount of experience before being allowed to take the examination.
- B. Item B allows a person to take the journeyman examination if the person has completed an apprentice sprinkler fitter program. Apprentice programs are designed to prepare a person to become a journeyman. It is reasonable to allow a person who has completed such a program to take the journeyman examination.

7512.1800 JOURNEYMAN SPRINKLER FITTER CERTIFICATE.

Subpart 1. **Certificate required.** Minnesota Statutes, section 299M.03, subdivision 2, prohibits a person from performing fire protection-related work as a journeyman sprinkler fitter unless the person is annually certified as a journeyman sprinkler fitter. Subpart 1 is consistent with this statutory prohibition and is included in the rules as a lead-in to the requirements for a journeyman certificate application.

Subpart 2. **Application for certificate.** Before issuing a journeyman certificate, the Commissioner needs to evaluate an applicant to make sure that the applicant complies with the requirements of Minnesota Statutes, chapter 299M, and these rules. To properly evaluate an applicant, the Commissioner needs to obtain a great deal of information about the applicant. The Commissioner will rely on the journeyman certificate application to obtain the necessary information. Subpart 2 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 2 list the information that must be on an initial application. It is reasonable to list these items together in the rules so that applicants will readily know the requirements of an initial application and so that the Commissioner will have a clearly stated basis for determining whether an initial application is complete.

- A. Item A asks for information about the identity of the applicant. The reasons for requiring this information are the same as for requiring information about the identity of contractor applicants, as discussed under part 7512.0500, subpart 1, item D.
- B. Item B asks for the history of journeyman certification of the applicant. The reasons for requiring this information are the same as for requiring information about the history of contractor applicants, as discussed under part 7512.0500, subpart 1, item E.
- C. To obtain a journeyman certificate, a person must either pass the journeyman examination or be exempt from passing the examination under part 7512.0300. It is reasonable to require the applicant to supply this information because the applicant is the only person who would likely have this information.

- D. Item D requires that the application be accompanied by a completed tax information form. This is part of the application because it is required by Minnesota Statutes, section 270.72, subdivision 4.
- E. Item E requires that the application be accompanied by a certificate fee of \$75. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- F. Item F provides a catch-all for the Commissioner to request other information on the application, as necessary to determine whether the applicant meets the requirements of Minnesota Statutes, chapter 299M, and these rules. Item F is included in case any application requirement was overlooked in these rules and in case any requirement is later added. This puts the applicant on notice that there may be other things required on the application than those which are specifically set out in this subpart. Item F is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the applicant's eligibility to be a journeyman.
- G. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 3. Issuing certificate. Minnesota Statutes, section 299M.06, gives the Commissioner the authority to issue or to refuse to issue a certificate. The Commissioner must make a decision after reviewing the initial certificate application and attached documents. It is important that the Commissioner be consistent in making these decisions. Listing the reasons for refusing to issue a certificate together in the rules is helpful for applicants so they will readily know the requirements that must be met to obtain a journeyman certificate. Further, the Commissioner will have a clearly stated basis for certificate determinations. The basis for each reason to refuse to issue is discussed as follows:

- A. The Commissioner will refuse to issue a certificate if the application or items filed with the application are not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the applicant.
- B. Under item B, a person must either pass the journeyman examination or be exempt from passing the examination under part 7512.0300. It is reasonable to require a person to pass the journeyman examination before being issued a certificate to ensure that the person is knowledgeable in the fire protection system industry. Part 7512.0300 sets out conditions for obtaining a certificate without examination. The discussion in this document under part 7512.0300 gives the reasons for the two year exemption period and why persons so exempted are knowledgeable in the fire protection system industry.
- C. Under part 7512.2600, a revoked journeyman loses his or her certificate and may not hold another certificate during the revocation period. Under part 7512.2700, a suspended journeyman may not perform fire protection-related work during the suspension period. Denying a certificate to an applicant currently under revocation or suspension is a reasonable way to enforce parts 7512.2600 and 7512.2700.

- D. Item D carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing a certificate if the Commissioner of Revenue notifies us to not issue the certificate.
- E. Item E requires an applicant to meet all the requirements of a journeyman set out in Minnesota Statutes, chapter 299M, and these rules before a certificate is issued. These requirements help ensure that fire protection-related work performed by the journeyman is adequate to protect life and property. If the journeyman did not meet these requirements, there would be no way to ensure this protection. Item E is reasonable.

Subpart 4. **Limited certificate.** There is at least one company in Minnesota that installs and services its own fire protection systems for the purpose of addressing special fire protection needs related to expensive equipment or hazardous manufacturing processes. This company has employees who perform the fire protection-related work. These employees receive training specific to the systems they work on. Most of these employees spend a substantial portion of their time performing fire protection-related work, but this portion does not approach full time. It is likely that these employees would be unable to qualify to take the journeyman examination and, therefore, would be unable to obtain a journeyman certificate under subpart 3. If this were the case, this company would be able to continue using these employees to perform the company's fire protection-related work. There are possibly a handful of other companies in this situation. It is important as a consideration to Minnesota businesses that these companies be allowed to perform their own fire protection-related work, as long as there are sufficient indications that the work is properly performed.

During the development of these rules, it was asserted that work performed by these companies was up to acceptable standards and that the supervisor of the work was fully qualified to become a managing employee. The advisory council discussed this matter at length. Some members expressed concern about allowing any exceptions to the journeyman requirements listed in subpart 3. However, at no time was any evidence put forward that work performed by these companies was unsafe or substandard.

The Department has decided to create a limited journeyman certificate that would enable these companies to continue to perform their own fire protection-related work, but to narrowly limit this exception to ensure the quality of the work and the safety of the public.

The limited journeyman's company would have to obtain a contractor license, which means that one employee would have to qualify as a managing employee. This would ensure that at least one person on staff meets standards applicable to all contractors, including passing the managing employee examination. The limited journeyman would be limited to working on property that the company either owned or leased for at least one year. This ensures safety because the company has a substantial financial interest in the proper performance of the fire protection-related work. The employer would have to certify and document the areas of competence of the limited journeyman and the limited journeyman would be limited to working in those areas under the supervision of the managing employee. This ensures safety because it requires the company to make a commitment to the limited journeyman's competence. Finally, the limited journeyman certificate and card would be marked with the work limitations. This will allow the Commissioner and the authority having jurisdiction to verify if a limited journeyman is working within his or her limitations.

Subpart 5. **Conditional certificate.** Under Minnesota Statutes, section 299M.03, subdivision 2, a person cannot work as a journeyman unless annually certified as a journeyman. The rules require a person to pass the journeyman examination before

obtaining a certificate. This presents a problem for a person who has completed an apprentice program, but who has not yet passed the examination. This also presents a problem for a journeyman from out of state who has not yet passed the examination. Unless an exception is made to allow these persons to perform fire protection-related work, they would be unable to work in their profession until passing the examination. It is important that these persons be allowed to perform fire protection-related work, as long as there are sufficient indications that the work is properly performed.

The advisory council discussed these concerns and the possible solutions to the problems presented. The council felt that it would not compromise safety to allow these persons to perform fire protection-related work for a limited period of time while under adequate supervision. A six-month time period is long enough for the person to take the journeyman examination at two times and does not place too great a burden on the person. The supervision requirement ensures that the journeyman's work is properly performed. The journeyman would be issued a conditional certificate with the conditions indicated on the certificate so that the Commissioner and the authority having jurisdiction can verify that a limited journeyman is working within his or her conditions. The prohibition against obtaining another conditional certificate within three years was so that this exception did not create a loop hole for persons to perform fire protection-related work without ever taking the examination.

7512.1900 JOURNEYMAN SPRINKLER FITTER CERTIFICATE RENEWAL.

Subpart 1. **Certificate expiration date.** The certificate expiration date is June 30 of each year to be consistent with the renewal period for contractors, managing employees, and apprentices. See the discussion under part 7512.0600, subpart 1, for the reasons the contractor licensing year was set from July 1 to the following June 30.

Subpart 2. **Renewal application.** Before renewing a journeyman certificate, the Commissioner needs to make sure that the journeyman continues to comply with the requirements of Minnesota Statutes, chapter 299M, and these rules. The information needed to do this is requested on the renewal application. Subpart 2 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 2 list the information that must be on a renewal application. It is reasonable to list these items together in the rules so that journeymen will readily know the requirements of a renewal application and so that the Commissioner will have a clearly stated basis for determining whether a renewal application is complete.

- A. Item A requests the journeyman's name and journeyman number. This information is used to identify the journeyman.
- B. A renewal application sent to a journeyman will have a printout of the journeyman's address, telephone number, and driver's license number. Item B requires a journeyman to list any changes to this information. This information is used by the Fire Marshal to administer journeyman certification and it is important to this task that this information be kept current. The journeyman readily knows this information and it puts very little burden on the journeyman to update this information.
- C. Item C asks the journeyman to supply documentation showing the journeyman has met the continuing education requirements of subpart 5. The Commissioner has no means to get lists of all continuing education training conducted in the country. The journeyman should have this information easily and readily available. Item C is a reasonable way for the Commissioner to verify compliance with subpart 5.

- D. Item D requires that the application be accompanied by a certificate renewal fee of \$75. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- E. Item E provides a catch-all for the Commissioner to request other information, as necessary to determine compliance with Minnesota Statutes, chapter 299M, and these rules. Item E is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the journeyman's continuing eligibility to have a certificate.
- F. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 3. Reasons to refuse renewal. A journeyman may renew a journeyman certificate by submitting a completed renewal application to the Commissioner. The deadline for this is June 30, which coincides with the date the certificate expires. Subpart 3 puts journeymen on notice of the fact that a renewal certificate must be issued before a journeyman can perform fire protection-related work after June 30; submission of a renewal application by June 30 is not enough.

It is important that the Commissioner be consistent in renewing or refusing to renew a certificate. Items A to D contain the reasons for refusing to renew a certificate. Listing the reasons for refusing to renew a certificate is helpful for journeymen so they will readily know the requirements that must be met and for the Commissioner who will have a clearly stated basis for certificate determinations.

- A. The Commissioner will refuse to renew a certificate if the application is not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the journeyman.
- B. Subpart 5 requires a journeyman to attend continuing education courses. Refusing to renew a certificate is a reasonable way to enforce this requirement.
- C. Part 7512.0300 allows a person to obtain a journeyman certificate without passing the journeyman examination. Under part 7512.0300, a person who obtains a certificate without passing the examination must either pass the examination within two years or surrender the certificate. Item C is consistent with part 7512.0300 by denying renewal to such a person who has not passed the examination within the two year exemption period.
- D. Under parts 7512.2600 and 7512.2700, a person may not perform fire protection-related work during a revocation or suspension. Refusing to renew a certificate during a revocation or suspension is a reasonable way to enforce these two parts.
- E. Item E carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing or renewing a certificate if the Commissioner of Revenue notifies us to this effect.

Subpart 4. **Application after lapse.** A journeyman certificate expires at midnight on June 30. If the certificate has not been renewed by this time, it is no longer valid and cannot be renewed. To get another journeyman certificate, the person must apply for one. Subpart 4 allows the former journeyman to use the renewal procedures to obtain a new certificate within one year of lapse. If it is more than a year, the journeyman must use the initial certificate application procedures, including retesting, to obtain a new certificate. The renewal procedures are easier to comply with than the initial application procedures. When a person's journeyman certificate has lapsed only a short period of time, it is reasonable to allow the person to use the renewal procedures to obtain another certificate because the person's journeyman information is recent enough for the Commissioner to rely on. The one-year time period to use the renewal procedures to obtain another certificate reduces the impact of the rules on journeymen.

Subpart 4 states that a person loses all journeyman privileges after the expiration of a certificate and before a new certificate is granted. It is important to state that privileges are lost during this period so that it is clear that getting a new certificate does not retroactively restore journeyman privileges during the lapse.

Subpart 5. **Continuing Education.** It is important that journeymen stay abreast of new technologies in fire protection systems and of changes to laws and rules. It is a good business practice for a contractor to have its employees keep up on developments in fire protection systems and it will put little if any burden on contractors to have their journeymen attend ten hours of continuing education courses a year.

7512.2000 JOURNEYMAN WORK REQUIREMENTS.

Subpart 1. **Competence.** It is necessary that a journeyman be competent to perform fire protection-related work, because the Commissioner is relying on the journeyman to properly perform the work and for on-site supervision of apprentices. The competence of the journeyman is critical for the proper installation of the system. It is reasonable for the commissioner to require the journeyman to be competent due to this responsibility.

Subpart 2. **Card.** It is necessary that the commissioner and the authority having jurisdiction have a means to verify that persons found at a job site performing fire protection-related work are qualified. This is important to the administration of the program and to carrying out its intent to protect life and property from fire. Subpart 2 requires a journeyman to carry a journeyman card and a picture identification card while working as a journeyman. This requirement is reasonable because it places very little burden on the journeyman and because it is common to the construction trades.

APPRENTICE SPRINKLER FITTER. PARTS 7512.2100 TO 7512.2300

7512.2100 APPRENTICE SPRINKLER FITTER REGISTRATION.

Subpart 1. **Registration required.** Minnesota Statutes, section 299M.03, subdivision 2, prohibits a person from performing fire protection-related work as an apprentice sprinkler fitter unless the person is annually registered as an apprentice sprinkler fitter. Subpart 1 is consistent with this statutory prohibition and is included in the rules as a lead-in to the requirements for an apprentice registration application.

Subpart 2. **Application for registration.** Before issuing an apprentice registration, the Commissioner needs to evaluate an applicant to make sure that the applicant complies with the requirements of Minnesota Statutes, chapter 299M, and these rules. To properly

evaluate an applicant, the Commissioner needs to obtain a great deal of information about the applicant. The Commissioner will rely on the apprentice registration application to obtain the necessary information. Subpart 2 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 2 list the information that must be on an initial application. It is reasonable to list these items together in the rules so that applicants will readily know the requirements of an initial application and so that the Commissioner will have a clearly stated basis for determining whether an initial application is complete.

- A. Item A asks for information about the identity of the applicant. The reasons for requiring this information are the same as for requiring information about the identity of contractor applicants, as discussed under part 7512.0500, subpart 1, item D.
- B & C. Item B requires that the application be accompanied by documentation that the applicant is in a sprinkler fitter program where the applicant is regularly engaged in learning the trade under the direct supervision of a licensed fire protection contractor or journeyman sprinkler fitter. Item C requires that the application be accompanied by documentation that the applicant is registered with a state or federal approval agency. These are consistent with the definition of apprentice sprinkler fitter set out in Minnesota Statutes, section 299M.01, subdivision 2.
- D. Item D requires that the application be accompanied by a completed tax information form. This is part of the application because it is required by Minnesota Statutes, section 270.72, subdivision 4.
- E. Item E requires that the application be accompanied by a registration fee of \$15. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- F. Item F provides a catch-all for the Commissioner to request other information on the application, as necessary to determine whether the applicant meets the requirements of Minnesota Statutes, chapter 299M, and these rules. Item F is included in case any application requirement was overlooked in these rules and in case any requirement is later added. This puts the applicant on notice that there may be other things required on the application than those which are specifically set out in this subpart. Item F is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the applicant's eligibility to be an apprentice.
- G. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 3. Issuing registration. Minnesota Statutes, section 299M.06, gives the Commissioner the authority to issue or to refuse to issue a registration. The Commissioner must make a decision after reviewing the initial registration application and attached documents. It is important that the Commissioner be consistent in making these decisions. Listing the reasons for refusing to issue a registration together in the rules is helpful for applicants so they will readily know the requirements that must be met to obtain an apprentice registration. Further, the Commissioner will have a clearly stated basis for determinations. The basis for each reason to refuse to issue is discussed as follows:

- A. The Commissioner will refuse to issue a registration if the application or items filed with the application are not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the applicant.
- B & C. Items B and C ensure that an apprentice sprinkler fitter meets the requirements of an apprentice contained in the definition of apprentice sprinkler fitter set out in Minnesota Statutes, section 299M.01, subdivision 2.
- D. Under part 7512.2600, a revoked apprentice loses his or her registration and may not hold another registration during the revocation period. Under part 7512.2700, a suspended apprentice may not perform fire protection-related work during the suspension period. Denying a registration to an applicant currently under revocation or suspension is a reasonable way to enforce parts 7512.2600 and 7512.2700.
- E. Item E carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing a registration if the Commissioner of Revenue notifies us to not issue the registration.
- F. Item F requires an applicant to meet all the requirements of an apprentice set out in Minnesota Statutes, chapter 299M, and these rules before a registration is issued. These requirements help ensure that fire protection-related work performed by the apprentice is adequate to protect life and property. If the apprentice did not meet these requirements, there would be no way to ensure this protection. Item F is reasonable.

7512.2200 REGISTRATION RENEWAL.

Subpart 1. **Registration expiration date.** The registration expiration date is June 30 of each year to be consistent with the renewal period for contractors, managing employees, and journeymen. See the discussion under part 7512.0600, subpart 1, for the reasons the contractor licensing year was set from July 1 to the following June 30.

Subpart 2. **Renewal application.** Before renewing an apprentice registration, the Commissioner needs to make sure that the apprentice continues to comply with the requirements of Minnesota Statutes, chapter 299M, and these rules. The information needed to do this is requested on the renewal application. Subpart 2 requires that the application be on a form provided or approved by the Commissioner as a means to ensure consistency in applications. The items of subpart 2 list the information that must be on a renewal application. It is reasonable to list these items together in the rules so that apprentices will readily know the requirements of a renewal application and so that the Commissioner will have a clearly stated basis for determining whether a renewal application is complete.

- A. Item A requests the apprentice's name and apprentice number. This information is used to identify the apprentice.
- B. A renewal application sent to an apprentice will have a printout of the apprentice's address, telephone number, and driver's license number. Item B requires the apprentice to list any changes to this information. This information is used by the Fire Marshal to administer apprentice certification and it is important to this task that this information be kept current. The apprentice readily knows this information and it puts very little burden on the apprentice to update this information.

- C. Item C asks the apprentice to supply documentation of progress in the apprentice's sprinkler fitter program. The Commissioner has no means to directly get this information. The apprentice should have this information easily and readily available. Item C is a reasonable way for the Commissioner to verify proper training of the apprentice.
- D. Item D requires that the application be accompanied by a registration renewal fee of \$15. The reasonableness of this fee and others is discussed in Appendix A to this document, which sets out all fees charged under these rules and which explains why the fee structure is reasonable.
- E. Item E provides a catch-all for the Commissioner to request other information, as necessary to determine compliance with Minnesota Statutes, chapter 299M, and these rules. Item E is reasonable because the Commissioner is limited to requesting only the information that is necessary to determine the apprentice's continuing eligibility to be registered.
- F. The applicant must sign the application, verifying that the information in the application is true. This is a reasonable way to ensure the accuracy of the information.

Subpart 3. **Reasons to refuse renewal.** An apprentice may renew an apprentice registration by submitting a completed renewal application to the Commissioner. The deadline for this is June 30, which coincides with the date the registration expires. Subpart 3 puts apprentices on notice of the fact that a renewal registration must be issued before an apprentice can perform fire protection-related work after June 30; submission of a renewal application by June 30 is not enough.

It is important that the Commissioner be consistent in renewing or refusing to renew a registration. Items A to D contain the reasons for refusing to renew a registration. Listing the reasons for refusing to renew a registration is helpful for apprentices so they will readily know the requirements that must be met and for the Commissioner who will have a clearly stated basis for registration determinations.

- A. The Commissioner will refuse to renew a registration if the application is not complete. All parts of the application are necessary for the Commissioner to administer chapter 299M and these rules. It is reasonable to refuse to issue if the applicant has not given the Commissioner all the information necessary for the Commissioner to properly evaluate the apprentice.
- B. Part 7512.2300, subpart 1, requires an apprentice to make satisfactory progress in the apprentice's sprinkler fitter program. See the discussion under part 7512.2300, subpart 1, regarding satisfactory progress and the reasons for requiring an apprentice to make satisfactory progress. Refusing to renew a registration is a reasonable way to enforce this requirement.
- C. Under parts 7512.2600 and 7512.2700, a person may not perform fire protection-related work during a revocation or suspension. Refusing to renew a registration during a revocation or suspension is a reasonable way to enforce these two parts.
- D. Item D carries out the directive of Minnesota Statutes, section 270.72, subdivision 1, which prohibits us from issuing or renewing a registration if the Commissioner of Revenue notifies us to this effect.

Subpart 4. Application after lapse. An apprentice registration expires at midnight on June 30. If the registration has not been renewed by this time, it is no longer valid and cannot be renewed. To get another apprentice registration, the person must apply for one. Subpart 4 allows the former apprentice to use the renewal procedures to obtain a new registration within one year of lapse. If it is more than a year, the apprentice must use the initial registration application procedures to obtain a new registration. The renewal procedures are easier to comply with than the initial application procedures. When a person's apprentice registration has lapsed only a short period of time, it is reasonable to allow the person to use the renewal procedures to obtain another registration because the person's apprentice information is recent enough for the Commissioner to rely on. The one-year time period to use the renewal procedures to obtain another registration reduces the impact of the rules on apprentices.

Subpart 4 states that a person loses all apprentice privileges after the expiration of a registration and before a new registration is granted. It is important to state that privileges are lost during this period so that it is clear that getting a new registration does not retroactively restore apprentice privileges during the lapse.

7512.2300 APPRENTICE WORK REQUIREMENTS.

Subpart 1. Active in approved program. Minnesota Statutes, section 299M.01, subdivision 2, defines an apprentice sprinkler fitter to be a person who, amongst other things, "is regularly engaged in learning the trade . . ." If an apprentice is not making satisfactory progress, the apprentice is not learning the trade, and thus is not meeting the requirements of the statute. The requirement that the apprentice make the progress in the apprentice's program is to ensure that the apprentice performing fire protection-related work is learning the trade through a set program and not just by on-the-job training. The programs have many important training sections, including personal safety on the job. Once an apprentice is registered, the apprentice continues to obtain information and training in fire protection-related work. This is reasonable so that the Commissioner can be confident in the continually developing competence of the apprentice in the installation of fire protection systems. Subpart 1 uses the word "annually" because the registration expires and must be renewed annually.

Subpart 2. Card. It is necessary that the commissioner and the authority having jurisdiction have a means to verify that persons found at a job site performing fire protection-related work are qualified. This is important to the administration of the program and to carrying out its intent to protect life and property from fire. Subpart 2 requires an apprentice to carry an apprentice card and a picture identification card while working as an apprentice. This requirement is reasonable because it places very little burden on the apprentice and because it is common to the construction trades.

EXAMINATIONS. PART 7512.2400

7512.2400 EXAMINATIONS. It is necessary to ensure the competency of managing employees and journeymen as a means to ensure the safety of fire protection systems that are installed and serviced by the managing employees and journeymen. These rules ensure this competency in two ways. The first way is requiring minimum training or experience qualifications. These are set out in part 7512.1300, subpart 2, for managing employees and in part 7512.1700, subpart 2, for journeymen. The other way to ensure competency that managing employees and journeymen must pass an examination before being certified. For managing employees, this is required by part 7512.1400, subpart 1. For journeymen,

this is required by part 7512.1800, subpart 3. Part 7512.2400 sets out some of the specifics regarding the examinations.

Subpart 1. Examination specifications. When a fire protection system is installed or serviced, it is important that the work be competently performed so that the system will properly protect against fire. It is also important that the work be performed safely and that the work be performed within the parameters of the statutes and rules. Subpart 1 is reasonable because it limits the examination to testing for these things.

Subpart 2. Examination administration. It is important that examinations be professionally developed and administered and that examination dates be regularly available for the convenience of applicants. The Commissioner's staff could develop the expertise to properly develop and administer the examination, but there are professional testing services available that can develop and administer the examination more efficiently and at a lower cost than the Commissioner's staff. Subpart 2 was included to allow the Commissioner to contract with a professional examination service to develop and administer the examination.

Subpart 3. Examination application. Subpart 3 states that the examination fee is nonrefundable. This puts the applicant on notice of this. The reason the fee is nonrefundable is that costs are incurred to process the application and to direct the resources to make the examination available on the appointed date. These costs are incurred regardless of whether the applicant actually takes the examination or not.

Subpart 4. Retesting. A person who fails an examination once is required to wait 60 days before retaking the examination. A person who fails the examination two or more times is required to wait 180 days before retaking the examination. The waiting period is designed to ensure that the applicant takes an appropriate amount of time to properly prepare for the examination. It will also keep an applicant from reapplying over and over without preparing for the examination and memorizing the examination questions. Subpart 4 is a reasonable way to protect the integrity of the examination.

REVOCATION AND SUSPENSION. PARTS 7512.2500 TO 7512.2700

7512.2500 ACTS ATTRIBUTED TO CONTRACTOR. Contractor licenses can be issued to partnerships, corporations, and limited liability companies where the control of the business is in the hands of several persons. These "controlling persons" include owners, officers, board members, and managing employees. It is necessary to state how the acts of a controlling person will affect the status of a license held by a partnership, corporation, or limited liability company. The first sentence of part 7512.2500 requires the Commissioner to revoke the license of a partnership, corporation, or limited liability company if a controlling person commits a revocable violation. Likewise, the Commissioner will suspend if a suspendable violation is committed. This makes all controlling persons responsible for a violation committed by any controlling person.

Where all controlling persons are involved in a violation, it is clearly appropriate to make all of these persons responsible for the violation. If only one controlling person is actively involved in a violation, but others know about it, this rule makes it less likely that the others will stand passively by and allow the violation to continue. Where a controlling person takes an absentee role in the business, this person is relying, for better or worse, on the other controlling persons to operate the business. Further, a contractor license is a single license that was issued to the controlling persons as a group. There is no authority or common practice for somehow treating the license as a set of separate licenses for each of

the controlling persons. It is reasonable to make all controlling persons responsible for a violation committed by any of the controlling persons.

Contractors will hire employees and agents to perform fire protection-related work on behalf of the contractor and to conduct the contractor's business. It is necessary to state how the acts of an employee or agent will affect the status of a contractor license. The second sentence of part 7512.2500 makes the contractor responsible for an act of an employee or agent if the contractor authorizes or ratifies the act. The contractor is also responsible for an act of an employee or agent if the contractor retains the benefits of the act after actual knowledge of the act.

When an employee or agent of the contractor commits an act, the act is committed on behalf of the contractor. By authorizing or ratifying an act, the contractor gives its explicit approval. These elements make it an act of the contractor. It is reasonable to hold the contractor responsible for its own acts. In many cases, it would be hard to prove that a contractor has authorized or ratified an act of an employee or agent. A contractor could claim ignorance in the hopes of escaping the consequences of the act. If, by claiming ignorance, a contractor were allowed to escape the consequences and yet keep the benefits of an act, it would encourage a contractor to use an employee or agent to commit violations. It is reasonable to hold a contractor responsible for a violation if the contractor retains the benefits of the violation after actual knowledge of the violation.

7512.2600 REVOCATION. In general, the violations leading to revocation involve incompetence, dishonesty, or unreliability. These violations indicate that a person cannot be trusted or relied upon to properly perform fire protection-related work or to follow the statutes and rules governing the fire protection industry. It follows that the person should not be licensed as a fire protection contractor, certified as a managing employee, certified as a journeyman, or registered as an apprentice. Revocation is used when the long-term withdrawal of a license, certificate, or registration is appropriate. A revocation will last for at least one year.

Subpart 1. Grounds for revocation. Subpart 1 lists the grounds for revocation. Long-term withdrawal of a license, certificate, or registration is clearly appropriate for each of these grounds.

- A. Under item A, it is grounds for revocation if a person knowingly or negligently performs fire protection-related work that would result in an immediate threat to life if a fire were to occur. This violation is one of the main reasons this law and set of rules were developed. It is reasonable to prohibit a person from performing work that will place the public in danger.
- B. A suspension is used for less serious violations, but it is reasonable to revoke for a suspendable violation when it is the fourth such offense for a person within five years. Clearly this person is not amenable to correcting a violation by the threat of short-term withdrawals.
- C. It is reasonable to revoke a license, certificate, or registration if the Commissioner has been induced to issue it under falsified information. Note that the term "fraudulent" has an element of intentional dishonesty. Item C will not be used to revoke for unintentional errors made on an application. Item C is necessary to protect the integrity of the program.
- D. A felony is a crime punishable by imprisonment for more than one year. A gross misdemeanor is a crime punishable by imprisonment for 90 days to one year or to

payment of a fine of from \$700 to \$3,000, or both. The punishments show that these crimes are very serious. When a person commits a felony or gross misdemeanor related to the business of fire protection systems, it is reasonable to prohibit this person from performing this type of work in the future.

- E. Item E requires the Commissioner to revoke if a person violates a suspension. A person who violates a suspension clearly demonstrates a disregard for the laws and rules governing the fire protection industry. A person who violates a suspension cannot be trusted to comply with these laws and rules. An additional period of suspension would not be adequate for this person. Long term withdrawal of the person's license, certificate, or registration is clearly appropriate.

Subpart 2. Additional grounds for contractor license revocation. Subpart 2 lists grounds for revocation that are specific to contractors.

- A. When a contractor's insurance or bond lapses, the Commissioner will be notified at least 30 days in advance under part 7512.1000. The Commissioner will then notify the contractor of the problem. If the contractor continues to perform fire protection-related work after the insurance or bond lapses, it is an intentional act that is done in knowing disregard of the requirements to have insurance or a bond while performing this work. Doing so can put the customer at risk of serious financial loss. Long-term license withdrawal is clearly appropriate under these circumstances.
- B. The managing employee is the person who runs the contractor's business and is the human being who acts on behalf of the contractor's company. The contractor's license and the managing employee's certificate are inextricably intertwined. When the certificate of the managing employee is revoked for a serious violation, it is appropriate to also revoke the license of the contractor.

Subpart 3. Additional grounds for managing employee certificate revocation. For the same reasons as discussed under item B of subpart 2, when the license of the contractor is revoked for a serious violation, it is appropriate to also revoke the certificate of the managing employee.

Subpart 4. Revocation period and effect. Subpart 4 sets out the effects of revocation because these effects are not clearly set out elsewhere and so that the Commissioner is fair and consistent in administering revocation.

Subpart 4 prohibits an owner, officer, board member, or managing employee in a revoked contractor from being an owner, officer, board member, or managing employee in another licensed contractor. As discussed previously in this document, these are the persons who control a contractor. It is reasonable that controlling persons of a revoked contractor not be allowed to hold a controlling position in another contractor in order to hold them responsible for the actions of the revoked contractor.

Subpart 4 requires a person to immediately surrender a license, certificate, or registration upon revocation. These items can be used on a job site to indicate the person is qualified to perform fire protection-related work. Since a revoked person is no longer entitled to perform this work, it is reasonable to require that these items be surrendered.

Items A and B set out how to determine the length of the revocation period.

- A. Minnesota Statutes, section 364.03, subdivision 1, states:

"Notwithstanding any other provision of law to the contrary, no person shall be disqualified . . . from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to . . . the occupation for which the license is sought."

Section 364.07 expands on this by stating:

"The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license . . . on the grounds of conviction of a crime or crimes."

Sections 364.08 and 364.09 give some exceptions to these prohibitions, but the licensing, certification, and registration of persons in the fire protection industry is not among them. It is therefore necessary that these rules comply with the requirements of chapter 364.

Item A requires that the Commissioner use chapter 364 to determine a revocation period when the revocation is based solely or in part on a criminal conviction. This is reasonable because it is required by statute.

- B. Not all revocations will be based solely or in part on a criminal conviction. The length of such a revocation will not be determined under item A. It is necessary, therefore, to state the length of such a revocation.

Item B sets a revocation period of one year for a revocation not based on a criminal conviction. The revocable offenses that do not involve a criminal conviction are generally less serious than those offenses that do. Using the criteria of Minnesota Statutes, chapter 364, a revocation involving a criminal conviction will last a minimum of one year. It is reasonable that less serious offenses have a revocation period shorter than more serious offenses.

7512.2700 SUSPENSION. In general, violations leading to suspension are serious violations, but not as serious as those that lead to revocation. Suspension is used where short-term withdrawal of a license, certificate, or registration is appropriate. Suspension is designed to make the person aware of the seriousness of the violation in hopes that the person will correct the problem.

Subpart 1. Grounds for suspension.

- A. Item A requires the Commissioner to suspend a contractor license, managing employee certificate, journeyman certificate, or apprentice registration if the person willfully violates any provision of Minnesota Statutes, chapter 299M, or of these rules. Item A excludes any violation specifically listed in part 7512.2600 because these violations and the resulting consequences are addressed under revocation and they do not need to be addressed further under suspension.

Willfully, as described in subpart 4, means one of two things. One, the person intentionally committed the violation even though the person knew it was a violation. Two, the violation was caused by a poor business practice, the person was notified to correct the practice, and the person failed to correct the business practice within a reasonable time. Either type of willful violation is serious, however, short-term withdrawal (suspension) is sufficient to address this. If a suspension convinces the

person to comply, then no more action is needed. If the person continues to commit violations, then additional suspensions or revocation can be used.

- B. Item B requires the Commissioner to suspend if the person willfully violates or refuses to comply with a lawful request or order of the Commissioner. As discussed under item A, willful violations are serious, however, suspension is an appropriate and sufficient way to address such violations.
- C. Item C requires the Commissioner to suspend if the person is convicted of a misdemeanor related to the business of fire protection systems. As discussed under revocation, a conviction of a felony or gross misdemeanor is an appropriate grounds for long-term withdrawal (revocation). A misdemeanor is a crime and is serious, but not as serious as a felony or a gross misdemeanor. Suspension is an appropriate means to address a conviction for a misdemeanor.

Subpart 2. Additional grounds for contractor license suspension. Subpart 2 lists grounds for suspension that are specific to contractors.

- A. For the same reasons as discussed under item B of part 7512.2600, subpart 2, when the certificate of the managing employee is suspended for a violation, it is appropriate to also suspend the license of the contractor.
- B. Item B prohibits an ineligible person from being added as a controlling person by a contractor. An ineligible person would be unable to obtain a contractor license as an individual. It is reasonable to prevent the person from circumventing this by taking a controlling position in a contractor after a license has been granted. If the contractor was not aware of the person's ineligibility, it is reasonable to allow the contractor to remove the person in order to avoid suspension. In this situation, the contractor has already corrected the problem before it has caused problems and a suspension would serve no purpose.
- C. Funds are collected through a surcharge to support the administration of this licensing program. The commissioner collects the data needed to track all fire protection-related work by receiving copies of all permits issued in the state. This data will be compared to the surcharges collected and if it is found that a contractor has not provided the required amount, a letter will be sent to the contractor. This missing surcharge must then be sent to the commissioner within 10 days or the contractor license will be suspended. This is a reasonable way to ensure that all contractors share in the responsibility to fund the administration of this program. It is reasonable that a contractor not be permitted to perform fire protection-related work until the surcharge is paid.

Subpart 3. Additional grounds for managing employee certificate suspension. For the same reasons as discussed under item B of part 7512.2600, subpart 2, when the license of the contractor is suspended for a violation, it is appropriate to also suspend the certificate of the managing employee.

Subpart 4. Description of willfully. This part uses the term "willfully" to set out conditions for when suspension is appropriate.

- A. Under item A, a violation is willful if: (1) it is intentional; (2) the person knows or should reasonably know that the act or omission is a violation; and (3) the person is able to comply. Suspension is appropriate when a violation is intentional, knowledgeable, and voluntary. Period. Allowing corrective action or a second

chance in such a situation would only encourage persons to commit violations until they were caught.

- B. Under item B, a violation is willful, whether or not it is intentional, if: (1) a business practice used by the person makes the violation likely; (2) the Commissioner has given written notice to the person within the last three years to correct the practice; (3) the person has not corrected the practice within a reasonable time; and (4) the failure to correct the practice is a significant factor in causing the violation.

Where violations are not clearly intentional or where the violation is due to a business practice that makes errors likely, the Commissioner will work to educate the person and to improve the person's business practices. This is in line with the Commissioner's responsibilities to administer the program. A person will be subject to suspension for an unintentional violation only when the person fails to use an opportunity to take corrective action before a violation occurs. Allowing further corrective action or a third chance is not appropriate in this situation because it would serve to reward a person who procrastinates. It is reasonable to suspend a person for a violation where the person has failed to correct the problem that caused the violation.

Subpart 5. Suspension period and effect. Subpart 5 sets out the effects of suspension because these effects are not clearly set out elsewhere and so that the Commissioner is fair and consistent in administering suspension.

The consequence of a suspension is that a person is prohibited from performing fire protection-related work during a suspension. The person must immediately surrender a license, certificate, or registration upon suspension. These items can be used on a job site to indicate the person is qualified to perform fire protection-related work. Since a suspended person is temporarily prohibited from performing this work, it is reasonable to require that these items be surrendered. Likewise, it is reasonable for the Commissioner to return these items after the end of the suspension period.

Subpart 5 states that a suspension period ends after the last day of the period regardless of whether this day falls on a Saturday, Sunday, or legal holiday. The general rule for calculating a time period that ends on a Saturday, Sunday, or legal holiday is to extend the period to the next working day. (See part 7512.0100, subpart 6.) The general rule gives people a grace period to meet government deadlines when government offices are closed. This purpose does not apply to private businesses or workers, such as contractors, managing employees, journeymen, and apprentices, who may be open for business or working on Saturdays, Sundays, and legal holidays. It is reasonable to define the end of a suspension so that the general rule of counting days does not apply.

Items A to F set out how to determine the length of the suspension period.

A to D. It is necessary that the length of a suspension reflect the seriousness of the violation. The Commissioner has chosen to treat willful violations and misdemeanor convictions related to the fire protection-related work as equally serious. What will make a violation more serious is if the person has previously been suspended. The concept of progressive discipline suggests that it is reasonable to use increasingly severe suspension periods for successive violations.

Suspensions may be shortened by up to half if there are mitigating circumstances that indicate a shorter suspension is appropriate. This gives the Commissioner some latitude to tailor the suspension to fit the person and the violation. The

Commissioner's discretion is limited by item D which requires that the circumstances be listed and the reasons for shortening the suspension be given in writing.

Items A to C go back only five years when counting previous suspensions. It is reasonable to allow a suspended dealer to obtain a clean record by not committing any violations for a substantial period of time.

- E. When a contractor license is suspended, it is important to hold all controlling persons in the contractor accountable. The length of a suspension is increased or a suspension is turned into a revocation when a contractor has a previous suspension on its record. Item E includes the suspension of a contractor on the contractor's record. The suspension is also on the record of any other contractor that has a controlling person who is a controlling person of the suspended contractor. This is reasonable, because to do otherwise would allow a person to commit a series of suspendable violations and then escape the increased consequences by creating a new corporation and getting that corporation another contractor license.
- F. Item F extends the suspension period beyond that determined under items A to E if the suspension is imposed for a continuing violation and the violation is not corrected at the end of the original suspension period. This is a reasonable way to hold a person accountable for this type of violation and to ensure compliance by the person.

MUNICIPAL PERMIT PROGRAMS. PART 7512.2800

7512.2800 MUNICIPAL PERMIT PROGRAM. See the discussion under part 7512.1100 for an analysis of the Commissioner's authority to require and issue permits for fire protection work in areas of the state that are not covered by a municipal permit program. An area of the state is covered by a municipal permit program if the municipality provides a competent inspection under a program adopted by ordinance.

Subpart 1. Permits required by ordinance. To know the areas of the state where the Commissioner will require and issue permits, the Commissioner must know the areas of the state covered by municipal permit programs. Subpart 1 requires municipalities with permit programs to submit to the Commissioner a copy of the ordinances pertaining to fire protection system permits. This is reasonable because there is no other way to easily ascertain the areas of the state where there is a municipal permit program. The submittal must include documentation of training for the persons who will conduct the plan reviews and inspections. One element of the program is that the plan reviews and inspections must be competent. The competence of the reviews and inspections by a municipality is directly related to the qualifications of the persons performing the reviews and inspections on behalf of the municipality. Reviewing documentation of training for these persons is a reasonable way for the Commissioner to verify this competence.

Subpart 2. Plan review and inspection program. Minnesota Statutes, section 299M.07, refers to competent inspection, but does not set out criteria for how to determine whether an inspection is competent. An important part of any inspection is the plan review which comes before a fire protection system is installed to determine whether the system is properly designed so as to give adequate protection. It is, therefore, necessary to set out criteria for determining whether a plan review and an inspection are competent.

As stated under subpart 1, the competence of the plan review and inspection is directly related to the qualifications of the persons performing them. Subpart 2 requires that a plan review and inspection be conducted by a person trained in fire protection system plan

review and inspection. It is important that these persons be properly trained because fire protection system design and installation is intricate and complex. Further, it is very important that fire protection system design and installation be done properly because a mistake can lead to death, serious personal injury, and substantial property loss.

Subpart 3. **Municipal reporting.** This reporting requirement is important for a number of reasons. First, the Commissioner will use the information to verify that fire protection system contractors are licensed to conduct fire protection-related work in Minnesota. Second, the Commissioner will use the information to verify that the amount of fire protection-related work conducted by any one company matches the amount of surcharge paid by the contractor. Third, the Commissioner will use the information to create a data base of valuable information on the use of fire protection systems and related issues. Finally, this information will assist in the refinement of these requirements to better protect public safety in Minnesota.

Conclusion

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

12 August 1993
Date

Michael S. Jordan
Michael S. Jordan, Commissioner
Department of Public Safety

APPENDIX A

This appendix gives the basis for certain assumptions made in the Departmental Earnings Report for these rules. A copy of the Report and the review and comments by the Commissioner of Finance are attached to this Appendix.

These rules cover the issuance of and fees for contractor licenses, managing employee certificates, journeymen certificates, and apprentice registrations. These rules also cover surcharge fees on all fire protection systems and permit fees for plan reviews and inspections that will be conducted by the State Fire Marshal.

The initial contractor license fee is \$575 and the renewal fee is \$500. The F.Y. 1994 and F.Y. 1995 licensing totals of \$23,000 and \$20,000, respectively, are based on an estimate of 40 contractors working in the state.

There is no fee for the initial managing employee certificate, but the renewal certificate has a fee of \$75. The initial and renewal fees for a journeyman certificate are both \$75. The F.Y. 1994 and F.Y. 1995 certification totals of \$33,000 and \$36,000, respectively, are based on an estimate of 40 managing employees (one for each contractor) and 440 journeymen working in the state.

The initial and renewal fees for an apprentice registration are both \$15. The F.Y. 1994 and F.Y. 1995 registration totals of \$1,000 and \$1,000, respectively, are based on an estimate of 60 apprentices working in the state. (Note that $60 * \$15$ is \$900, but this number was rounded to the nearest thousand.)

The estimates of the numbers of contractors, managing employees, journeymen, and apprentices were based on discussions with members of the Advisory Council who are in the fire protection business. The fees were based in large part on discussions held during the consideration of the Legislature's adoption of Minnesota Statutes, chapter 299M.

In the State Fire Marshal's Office, 2.25 positions are dedicated full time to performing plan reviews and inspections. In setting the permit fee percentage, we first estimated the number of plan reviews and inspections that could be conducted annually with this amount of staff. We estimated that it would take approximately six hours for the plan review, inspection, and travel for each permit issued. This translated into 313 permits per inspector per year, or a total of 704 permits processed by the State Fire Marshal's Office each year. The average cost of a fire protection system was estimated to be \$15,000. To cover the estimated \$127,000 for salaries, indirect costs, and expenses associated with plan reviews and inspections each year, the permit fee was set at .012 times the cost of the fire protection system. This comes to an average fee of \$180 for the permit for a system times 704 permits a year for a total of \$126,720. This shows as \$127,000 in F.Y. 1994 and F.Y. 1995 under permits.

The surcharge fee was set at .002 times the cost of the fire protection system. The total cost of all fire protection-related work in Minnesota in a year was estimated to be \$50,000,000. The surcharge will generate approximately \$100,000 annually which matches the estimated amount for salaries, indirect costs, and expenses associated with administering the program.

The program will have one supervisor, two plan reviewers, and a half-time clerical support person.

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: August 12, 1993

To: George Beok, Administrative Law Judge Supervisor
Office of Administrative HearingsFrom: Michelle Harper 
Budget Operations

Phone: 296-7838

Subject: Departmental Earnings Rate Change Response

Pursuant to provisions of Laws 1993, sec. 56, subd. 5 (M.S. 16A.1285), the Department of Finance has reviewed and approved the attached departmental earnings proposal submitted by the Department of Public Safety on 7/11/93. If you have any questions or concerns, please call me at the above number.

cc: Marilyn Smith, Public Safety
Dwight Pederson

Appendix A to Sprinkler Rules SNR - Page 2

Departmental Earnings: Reporting/Approval

Part A: Explanation

Appendix A to Sprinkler Rules SNR - Page 3

Earnings Title: FIRE PROTECTION LICENSING FEES	Statutory Authority: M.S. 299M.	Date: 8-6-93
Brief Description of Item: FIRE PROTECTION LICENSING FEES FOR THE ISSUANCE OF LICENCES, CERTIFICATES, REGISTRATION AND COLLECTION OF PERMIT AND SURCHARGE FEES FOR THE STATE FIRE MARSHAL DIVISION.		
Earnings Type (check one): 1. <input type="checkbox"/> Service/User 2. <input type="checkbox"/> Business/Industry Regulating 3. <input checked="" type="checkbox"/> Occupational Licensure 4. <input checked="" type="checkbox"/> Special Tax/Assessment 5. <input type="checkbox"/> Other (specify):		
Submission Purpose (check one): 1. <input checked="" type="checkbox"/> Chap. 14 Review and Comment 2. <input type="checkbox"/> Approval of Allowable Inflationary Adjustment 3. <input type="checkbox"/> Reporting of Agency Initiated Change in Departmental Earnings Rate 4. <input type="checkbox"/> Other (specify):		
If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Impact of Proposed Change (change in unit rate, number of payees impacted, etc.): TO SUPPORT EXPENDITURES, CREATED BY NEW LEGISLATION, IN THE STATE FIRE MARSHAL DIVISION.		
ESTIMATED:	INITIAL LICENSE (FY 1994) 40 @ \$575	RENEWAL LICENSE (FY 1995) 40 @ \$500
	INITIAL CERTIFICATION (FY 1994) 440 @ \$ 75	RENEWAL CERT. (FY 1995) 480 @ \$ 75
	REGISTRATION (INITIAL AND RENEWAL) 60 @ \$15	
ESTIMATED:	PERMIT 704 @ \$180 PER YEAR	
	SURCHARGE .002% OF \$50,000,000 TOTAL WORK PER YEAR IN MINNESOTA	

OK
Diana P...
8/12/93

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)
 (\$1,000,000 = 1,000)

: Fiscal Detail

APID: 23000:99-10		AID: 536060		Rev. Code(s): 310, 321		_____ Dedicated _____ X _____ Non-	
Item	F.Y. 1991 Revenues:	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
LICENSING				20	20	23	20
CERTIFICATION	0	0	0	25	25	33	36
REGISTRATION	0	0	0	0	0	1	1
PERMITS	0	0	0	550	550	127	127
SURCHARGE	0	0	0	0	0	100	100
Expenditures:							
Direct			91	244	230	228	230
Indirect (10.05%)			4	15	15	15	15
Total			95	259	245	243	245
Current Deficit/Excess			(95)	336	350	41	39
Accumulated Excess/Deficit			(95)	241	591	(54)	(15)

THE FISCAL YEAR 1994 AND 1995 BIENNIAL BUDGET PROJECTION WERE BASED ON THE COLLECTION OF ALL PERMIT FEES AND A REIMBURSEMENT TO LOCAL OFFICIALS FOR ALL PERMITS ISSUED BY THEM. THE PROPOSED FISCAL YEAR 1994 AND 1995 BUDGETS DO NOT COLLECT A PERMIT FEE FOR THE LOCAL OFFICIALS, WE WILL ONLY COLLECT FEES FOR PERMITS ISSUED BY THE STATE FIRE MARSHAL DIVISION.

Agency Signature:



8/11/92

Appendix A to Sprinkler Rules SNR - Page 4