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MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

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June 30, 2010

VIA EMAIL to: sonars@lrl.leg.mn

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Amendment to Rules Relating to Manufactured Home Park Storm Shelters, *Minnesota Rules*, Chapter 1370; and Repeal of *Minnesota Rules* Parts 1370.0190 and 1370.0220; Governor's Tracking No. AR478

Dear Librarian:

The Minnesota Department of Labor and Industry intends to adopt rule amendments relating to Manufactured Home Park Storm Shelters, *Minnesota Rules*, Chapter 1370, and Repeal of *Minnesota Rules* Parts 1370.0190 and 1370.0220. We plan to publish a Notice of Intent to Adopt Rules Without a Public Hearing in the July 6, 2010 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules Without a Public Hearing.

If you have questions, please contact me at (651) 284-5128.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Patricia Munkel-Olson'. The signature is stylized and somewhat cursive.

Patricia Munkel-Olson
General Counsel
Office of General Counsel
Minnesota Department of Labor and Industry
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Attachment: Statement of Need and Reasonableness

Minnesota Department of Labor and Industry

Construction Codes and Licensing Division

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Relating to Manufactured Home Park Storm Shelters, Minnesota Rules, Chapter 1370; and Repeal of Minnesota Rules, Parts 1370.0190 and 1370.0220.

INTRODUCTION

This rule was last adopted in 1987. At that time, the Department incorporated a document titled, *Interim Guidelines for Building Occupant Protection from Tornadoes and Extreme Winds*¹ with amendments. This guideline is out of print and is no longer available. In July 2000, the Federal Emergency Management Agency ("FEMA") published a replacement guideline titled *Design and Construction Guidance for Community Shelters* to be used by States when determining design loads for storm shelters.

The purpose of this rulemaking is to update the incorporation by reference to accurately cite to the July 2000 *Design and Construction Guidance for Community Shelters* that is in use and available today, as amended by the Department. The proposed rules amend the guide to delete those sections that do not apply in Minnesota because of its geography or climate, or as a result of existing Minnesota statutes or rules. The Department did not utilize an advisory committee for the proposed rules because the new guideline is similar to the one that is currently incorporated into Chapter 1370.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Laura Alsides at the Department of Labor and Industry, Third Floor, 443 Lafayette Road North, St. Paul, MN 55155, e-mail at dli.rules@state.mn.us, telephone (651) 284-5006, or fax (651) 284-5725. TTY users may call (651) 297-4198.

STATUTORY AUTHORITY

Pursuant to the Department of Administration's Reorganization Order No. 193, the responsibilities of the Department of Administration in relation to State Building Codes and Standards as set forth in Minnesota Statutes, §§ 16B.59 through 16B.76, 327.20, 327.205, 327B.01 through 327B.12, and 327.31 through 327.36 (2004) were transferred to the Department of Labor and Industry.²

¹ TR-83A January 1980.

² Reorganization Order No. 193 was effective upon filing with the Secretary of State on May 16, 2005, and shall remain in effect until amended, repealed, or superseded. For a copy of the reorganization order, please contact Carrie

The Department's statutory authority to adopt the rules is set forth in Minnesota Statutes § 327.205, which provides:

"The commissioner of labor and industry shall adopt, by rule, minimum standards for the construction of low cost manufactured home park storm shelters by March 1, 1988. All shelters constructed after March 1, 1988, shall be constructed in accordance with these standards."

The Department's general statutory authority to adopt the rules is set forth in Minnesota Statutes § 326B.02, subdivision 5, which provides:

The commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend, and repeal rules relating to the commissioner's responsibilities under this chapter, except for rules for which the rulemaking authority is expressly transferred to the Plumbing Board, the Board of Electricity, or the Board of High Pressure Piping Systems.

The Department's additional statutory authorities to adopt rules are set forth in Minnesota Statutes §§ 326B.101, 326B.106, and 326B.13 (formerly numbered as 16B.59, 16B.61, 16B.64).

Minnesota Statutes § 326B.101, states:

The State Building Code governs the construction, reconstruction, alteration, and repair of buildings and other structures to which the code is applicable. The commissioner shall administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

Minnesota Statutes § 326B.106, subdivision 1, states in pertinent part:

Subject to sections 326B.101 to 326B.194, the commissioner shall by rule and in consultation with the Construction Codes Advisory Council establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety, including design and construction standards regarding heat loss control, illumination, and climate control... The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States... Model codes with necessary modifications and

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statewide specialty codes may be adopted by reference. The code must be based on the application of scientific principles, approved tests, and professional judgment. To the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or materials. To that end the code must encourage the use of new methods and new materials. Except as otherwise provided in sections 326B.101 to 326B.194, the commissioner shall administer and enforce the provisions of those sections...

Minnesota Statutes § 326B.13, subdivision 6, states, "The commissioner shall approve any proposed amendments deemed by the commissioner to be reasonable in conformity with the policy and purpose of the code and justified under the particular circumstances involved...."

These sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125, does not apply. *See* 1995 Minnesota Laws, chapter 233, article 2, section 58. Additionally, this rulemaking is an amendment of rules and so Minnesota Statutes § 14.125, does not apply.

As part of the codification of the reorganization order, Minnesota Statutes § 326B.02, subdivision 5, provides a general rulemaking authority to the Commissioner. This general authority states in pertinent part, "The commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend, and repeal rules relating to the Commissioner's responsibilities under this chapter..."³

Pursuant to Minnesota Statutes § 14.125, the Department published a notice of intent to adopt rules within 18 months of the effective date of the law authorizing or requiring rules to be adopted.⁴ Because the Department's first notices of intent to adopt rules published within 18 months of the effective date of the law, the rulemaking authority of Minn. Stat. § 326B.02, subd. 5, has not expired.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes § 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below repeat these factors and then give the Department's response.

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will

³ 2007 Minn. Laws, Art. 2, Sec. 3 became effective May 26, 2007.

⁴ The Department cited to the authority of Minn. Stat. § 326B.02 in rulemakings pertaining to at least two chapters of the State Building Code. *See* 33 SR 5 and 33 SR 250.

benefit from the proposed rule:

The classes of persons who will probably be affected by the proposed rule include manufactured home park owners that own and manage the parks and shelters, manufactured home park residents that live in the parks and use the shelters, architects and professional engineers that design the shelters, contractors involved in the construction of the shelters, and designated building officials that administer and enforce the State Building Code.

The classes of persons that will bear the costs of the proposed rule include manufactured home park owners that own and manage the parks and shelters, and manufactured home park residents that live in the parks and use the shelters.

The classes of persons that will benefit from the proposed rule include manufactured home park owners, manufactured home park residents, their guests, and any others that may work at the park and use the shelters during inclement weather, municipal emergency services personnel that act during inclement weather, and the surrounding community.

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:

The probable costs to the agency for implementation and enforcement of this rule are associated with educating affected classes of persons about the amended rules and providing a copy of the adopted rule to the municipalities that administer and enforce the State Building Code. The probable costs to any other agency for implementation and enforcement of this rule include the cost associated with obtaining a copy of the new FEMA Guide. The Department does not anticipate any effect on state revenues as a result of adopting this rule.

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

The Department has determined that there is no other less costly or intrusive method for achieving the purpose of the proposed rule.

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:

This is the only guideline that exists relative to community shelters. The Department reviewed but rejected the document entitled "Taking Shelter from the Storm" FEMA 320, Edition 2/March 2004 because it provides guidelines for individual home shelters and not community shelters. The Department determined that costs associated with this document to the individual homeowner would be extreme and prohibitive. Additionally, the design of manufactured homes⁵ would not work or coordinate with the designs outlined in the FEMA 320 document.

⁵ Minn. R. ch. 1350.

(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

There will be no costs related to compliance with the proposed rule for manufactured home parks that have an existing shelter. For new shelters, the probable costs will be borne directly by the manufactured home park owner who is responsible for providing a shelter in a manufactured home park that is designed to the criteria specified by the rule and the guide. These probable costs are likely to be borne indirectly by manufactured home park residents who may experience an increase in costs if the owner passes on any costs to residents.

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals:

This rule incorporates a new guideline for designing manufactured home park shelters because the former guide is out of print and no longer available. Without this rule and the new guidelines, architects and professional engineers would need to study and develop the shelter design criteria from scratch, which could prove more costly for park owners and residents than the proposed rule. Shelters that are individually and independently designed may result in inconsistent designs for shelters, which could result in inadequate or overly-constructed structures for the state of Minnesota. If a shelter is designed and constructed in an overly-conservative manner, the construction costs could be excessive, especially if they contain design elements that are not applicable to this state. An inadequately designed shelter could become a life safety issue if the shelter was unable to withstand the climatic conditions in Minnesota. This rule also provides a single shelter for all park residents in one building; as opposed to each individual resident having to construct his or her own emergency shelter.

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference:

This proposed rule incorporates a federal guideline. This is a guideline and not a mandatory regulation, but the guideline was intended to be incorporated by the states at their discretion.

PERFORMANCE-BASED RULES

Minnesota Statutes § 326B.101, provides that "...The commissioner shall administer and amend a state code of building construction which will provide basic and uniform *performance standards*..." It further states "...The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety." The standards referenced in this part of the statutes are referred to as "basic and uniform *performance standards*." The statute further requires an allowance for construction *at the least possible cost* consistent with recognized standards of health and safety. The guide incorporated in this rule is performance-based and it permits the use of alternate methods or materials, which help to reduce

costs.

Minnesota Statutes § 326B.106, authorizes the Department to, by rule, establish a code of standards for construction. This statute also mandates, that to the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, *avoiding wherever possible the incorporation of specifications of particular methods or materials*. The FEMA guide with Minnesota's amendments establishes minimum regulations for shelter design using performance-related provisions. They are founded on broad-based principles that make possible the use of new materials and new construction practices.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a February 3, 2010 letter by Administrative Law Judge Eric L. Lipman.

We will mail or email the proposed rules and Notice of Intent to Adopt Rules Without a Hearing to interested parties. Those parties include:

1. Manufactured Home Owners Association of America;
2. All Parks Alliance for Change;
3. American Institute of Architects Minnesota (AIA MN);
4. American Council of Engineering Companies of Minnesota (ACEC/MN);
5. Minnesota Society of Professional Engineers (MSPE);
6. Minnesota certified building officials; and
7. Minnesota Manufactured Home Advisory Committee members.

Our Notice Plan also includes giving notice required by statute. We will mail or email the proposed rules and Notice of Intent to Adopt Rules Without a Hearing to everyone who has registered to be on the Department's rulemaking mailing lists pertaining the Minnesota State Building Code (other than electrical/plumbing) that are maintained pursuant to Minnesota Statutes § 14.14, subdivision 1a.

We will also give notice to the Legislature per Minnesota Statutes § 14.116.

We will also publish the proposed rules, the Statement of Need and Reasonableness, and the Notice of Intent to Adopt Rules Without a Hearing on the Department's website, which is located at <http://www.dli.mn.gov/PDF/docket/1370MHParkShelters.pdf>. The FEMA361 document is located at <http://www.fema.gov/plan/prevent/saferoom/fema361.shtm>.

CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes § 14.131, the Department has consulted with the Commissioner of Minnesota Management & Budget. We did this by sending Ryan Baumtrog, Executive Budget Officer at MMB, copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of

Intent to Adopt Rules Without a Hearing. We sent the copies on January 16, 2010. The documents included: the Governor's Office Proposed Rule and SONAR Form; almost final draft rules; and almost final SONAR. Mr. Baumtrog sent a memorandum dated February 12, 2010, which included the following: "In my opinion, the proposed changes will not impose a cost on local governments."

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes § 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule. If a manufactured home park owner receives a primary license to open a new manufactured home park with ten or more manufactured homes and the owner is required to provide a shelter, the shelter must comply with Minnesota Statutes § 327.205. Minnesota Statutes § 327.20 subdivision 1, items (6), (7), and (8), require that a shelter be constructed or a plan for the safe evacuation to a safe place for shelter be approved by the municipality where the park is located and posted at conspicuous locations throughout the park, depending upon the date of licensure. This rule simply provides design criteria for a shelter when it is required in a park. If the park owner (a small business) complies with this rule in the first year, the cost for the design of the shelter will likely not exceed \$25,000. The cost to construct the shelter may exceed that amount, but that is not a requirement of this rule, but rather the statute referenced above. Unless a city has the role of a manufactured home park owner, it will not be affected by this rule.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes § 14.128, subdivision 1, the Department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Department has determined that a local government will not be required to adopt or amend an ordinance or other regulation to comply with these proposed rules. The Department made this determination in light of Minn. Stat. § 326.121, which states that the State Building Code is the standard that applies statewide. As a result, an ordinance or other regulation should not be required for compliance.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having staff from its Construction Codes and Licensing Division testify in support of the need for and the reasonableness of the rules.

RULE-BY-RULE ANALYSIS

1370.0100 PURPOSE.

This rule is modified by deleting a citation to administrative rule part number 1370.0230 and replacing it with a cite to rule part number 1370.0361. This change is necessary and reasonable so that the rule part numbers contained in the entire chapter are accurately cited to since a new part number is being added to the end of the chapter.

The proposed rule also deletes the word “occupants” and replaces it with the word “residents.” This change is necessary to coordinate and update the language with similar language contained in this rule, and results in a consistent use of terms throughout the chapter.

1370.0110 SCOPE.

This rule is modified by deleting a citation to administrative rule part number 1370.0230 and replacing it with a cite to part number 1370.0361. This change is necessary and reasonable so that the rule part numbers contained in the entire chapter are accurately cited to since a new part number is being added to the end of the chapter.

1370.0120 DEFINITIONS.

Subpart 1. Scope, and Subp. 2 Storm Shelters.

These subparts delete citations to rule part number 1370.0230 and replaces them with citations to rule part number 1370.0361. These changes are necessary and reasonable so that the rule part numbers contained in the entire chapter are accurately cited to since a new part number is being added to the end of the chapter.

Subp. 3. Dual purpose storm shelter.

This subpart is modified by deleting the reference to “some other secondary” permitted use and replacing it with the phrase “other permitted uses”, which is necessary to clarify that these shelters have other uses and that the use may not be “secondary” in nature, as long as the use is a permitted use.

Subp. 3a. FEMA 361.

This new subpart defines FEMA 361 to provide the user with a definition and explanation for the document entitled “FEMA 361” that is referenced in the proposed rule.

1370.0130 APPLICABLE REQUIREMENTS.

Subpart 1. Incorporation by reference.

This subpart is modified by deleting the reference to ““Interim Guidelines for Building Occupant Protection from Tornadoes and Extreme Winds,” TR-83A January 1980, sections 1 and 2,” (Interim Guidelines) and replacing it with a reference to ““Design and Construction Guidance for Community Shelters,” FEMA 361, July 2000” because the Interim Guidelines in the existing rule has been out of print and has not been accessible to the public for at least five years. FEMA 361 replaces the Interim Guidelines for purposes of providing guidelines for the design and construction of community shelters. The proposed rule correctly references the current version and date of FEMA 361 so that users are utilizing and referencing the right document.

The proposed rule also adds the phrase “except as amended by this chapter” to clarify that FEMA 361 has been amended so that it is clearly understood that the administrative rule supersedes the base document with respect to the requirements being addressed by the section.

Lastly, this subpart, as currently written, could be interpreted to permit users to comply with FEMA 361 at their own discretion. To clearly state that FEMA 361 is the minimum standard and is not discretionary the words “and as a guide” and “use in” were deleted.

1370.0140 PLANS, SPECIFICATIONS, PERMITS.

This rule is changed to accurately refer to the professional designation of architects and professional engineers licensed according to the laws and rules of the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design. This change is necessary to more accurately identify the professionals involved with the design of shelters and that they are regulated by a specific licensing board in Minnesota.

The rule has also been modified by deleting the words “section 106 of the Uniform Building Code, incorporated by reference in part 1305.0010” and replacing it with the words “chapter 1300.” This modification is necessary and reasonable because plan, specification, and permit requirements in Minnesota are now located in Minn. R. chapter 1300.

1370.0150 SPACE REQUIREMENTS.

The proposed rule deletes the word “person” and replaces it with the words “park resident.” This change is necessary to clarify that the rule applies to park residents specifically.

The proposed rule also adds two sentences regarding square footage per resident. The first sentence clarifies that the square footage of a shelter is determined by the total number of park residents. The second sentence specifies that the park owner, architect, or professional engineer is responsible for determining the total number of residents and that the total number of residents must be included in plans and specifications. These new sentences are necessary to clarify that how square footage is determined, who is responsible for the determination, and that the total number of residents must be included in plans and specifications.

1370.0160 REQUIRED EXITS.

Subpart 1. Exits; openings. The proposed rule deletes the word “Uniform” and replaces it with the word “International.” The modification is necessary because the International Building Code has been adopted in place of the Uniform Building Code, which is no longer published.

The proposed rule also deletes the following sentence: “Openings in the exterior walls of the shelter must be protected to prevent flying missiles from entering the interior of the shelter.” This sentence is deleted because the requirement appears, unamended, in FEMA 361, so the sentence is no longer necessary.

Subp. 2. Disability access.

This subpart is modified to correctly reference administrative rule chapter 1341, Minnesota Accessibility Code, to clarify for the user that the chapter is a Minnesota Rule chapter. The modification is necessary to provide the correct title to Minnesota Rules, chapter 1341, which was revised and re-titled in an earlier rulemaking.

1370.0170 DRY INTERIOR.

The proposed rule makes changes that are necessary to correct sentence grammar to help clarify the meaning of the sentence. The modifications are as follows:

“Provisions must be made to construct storm shelters outside of flood-prone areas and other nonwater ponding areas ~~and so that the interiors remain~~ interior of the storm shelter remains reasonably dry.”

These changes are necessary to correct the grammar of the sentence to clarify its meaning.

1370.0180 UTILITY LINES.

The proposed rule changes the headnote and deletes the current language and replaces it with new language. The proposed rule clarifies the types of utilities that can serve the shelter and that the lines must be located underground to minimize the danger from lines downed from storms.

The proposed rule further provides types of electrical supply lines that must not be located over or under the shelter. This change was necessary because the previous rule did not provide adequate guidance regarding the types and locations of these lines.

1370.0210 ILLUMINATION.

Subpart 1. Minimum illumination. This subpart is modified by adding the words “inside the storm shelter and at exits” at the end of the sentence. The modification is necessary to clarify that the required illumination should be located appropriately within the shelter to provide adequate lighting inside the shelter and at exits.

Subpart 2. Source. The proposed rule correctly cites to chapter 1315, which directs users to the Minnesota rule chapter that adopts the latest electrical code.

1370.0230 SANITATION FACILITIES AND DRINKING WATER.

This rule part has not been modified. The words “and drinking water” have been added to the headnote to clarify that the rule part covers both sanitation facilities and drinking water. Although headnotes are not technically part of the rules, they do provide an effective finding tool for the convenience of users. As such, the added words are helpful in understanding the content of the rule part.

1370.0361 FEMA 361.

This new rule part modifies the Design and Construction Guidance for Community Shelters, FEMA 361, July 2000, by deleting certain chapters, particular sections, or appendices. The deletions are needed and reasonable because they do not apply to Minnesota due to its geography, climate, or specific Minnesota laws or rules.

Subpart 1. FEMA 361 Chapter 1. This subpart deletes FEMA Chapter 1, Introduction, in its entirety because it provides an introduction to the entire guide. However, the Department is not incorporating the entire guide. As a result, the FEMA introduction does not apply. The deletion of this chapter is necessary and reasonable to ensure that the proposed rule is clear and understandable to users and applies appropriately to the state of Minnesota.

Subp. 2. FEMA 361 Chapter 2. This subpart deletes FEMA Chapter 2, Protection Objectives, in its entirety because it deals with protection associated with in-home tornado shelters and describes the protection objectives of these types of shelters. The Department does not require the construction of in-home tornado shelters. It is necessary and reasonable to remove unnecessary code provisions from the FEMA to eliminate conflict and misunderstandings in the proposed rule.

Subp. 3. FEMA 361 Chapter 3. This subpart deletes subsections 3.2.2, Hurricanes, and 3.2.3 Typhoons, from FEMA 361 Chapter 3, Characteristics of Tornadoes and Hurricanes, in their entirety because Minnesota does not adopt hurricane or typhoon requirements. Minnesota, in its geographical location, does not experience these types of climatic conditions and eliminating unnecessary provisions of this nature provide a cost savings in the design and construction of these structures.

Subp. 4. FEMA 361 Chapter 7. This subpart deletes section 7.2, Seismic Hazard Conditions, from FEMA 361 Chapter 7, Additional Considerations, in its entirety because Minnesota does not adopt seismic requirements. Minnesota, in its geographical location, does not experience seismic conditions and eliminating unnecessary provisions of this nature provide a cost savings in the design and construction of these structures.

Subp. 5. FEMA 361 Chapter 8. This subpart amends FEMA 361 Chapter 8 by deleting

particular sections and subsections. The deletions are contained in four items:

A. This item deletes section 8.2, Square Footage/Occupancy Requirements, from FEMA 361 Chapter 8, Human Factors Criteria, in its entirety because the proposed rules include rule part 1370.0150, as modified, which specifically addresses space requirements. By deferring to rule part 1370.0150, as modified by these proposed rules, these structures are permitted to be smaller than that required by FEMA 361. The additional space requirement of FEMA 361 is excessive and costly as these spaces are not used for long periods of time. The duration of an emergency situation for tornadic activities generally lasts for 30 minutes or less, which is considerably less time than that for hurricanes and typhoons and seismic events are not common to our state.

B. This item deletes section 8.4, Lighting, from FEMA 361 Chapter 8, Human Factors Criteria, in its entirety because the proposed rules include rule part 1370.0210, as modified, which specifically addresses illumination. Rule part 1370.0210, as modified by these proposed rules, refers users to Minnesota's Electrical Code, Minn. R. ch. 1315, which will provide consistency in design and enforcement.

C. This item deletes section 8.5, Occupancy Duration, from FEMA 361 Chapter 8, Human Factors Criteria, in its entirety because Minnesota does not adopt hurricane requirements. Minnesota, in its geographical location, does not experience hurricanes and eliminating unnecessary provisions of this nature provide a cost savings in the design and construction of these structures.

Additionally, although subsection 8.5.1 addresses tornadoes, tornadoes are addressed conceptually in parts 1370.0230 and 1370.0361, subpart 1. Including the deletion of this subsection is reasonable and necessary because it will streamline the proposed rule and eliminate redundancy and confusion regarding similar subject matter.

D. This item deletes section 8.6, Emergency Provisions, from FEMA 361 Chapter 8, Human Factors Criteria, in its entirety because it contains information about requirements for shelters that will be used for extended periods of time, which is not necessary in Minnesota. The deletion of section 8.6 is needed and reasonable because the duration of an emergency situation for tornadic activity generally lasts for 30 minutes or less, which is considerable less time than that for hurricanes and typhoons. Eliminating section 8.6 will reduce the cost associated with these shelters..

Subp. 6. FEMA 361 Chapter 9. This subpart deletes chapter 9, Emergency Management Considerations, from FEMA 361 in its entirety because the State of Minnesota has an emergency management system that has been in place for years.

Subp. 7. FEMA 361 Chapter 10. This subpart amends FEMA 361 Chapter 10, Design Commentary, by deleting subsections 10.2.2, Design Wind Speeds for Hurricanes, and 10.2.3, Winds Speeds for Alaska, because Minnesota, in its geographical location, does not experience hurricanes or the climatic conditions found in Alaska and eliminating unnecessary provisions of this nature provide a cost savings in the design and construction of these structures.

Subp. 8. FEMA 361 Appendix A. This subpart deletes Appendix A, Benefit/Cost Analysis Model for Tornado and Hurricane Shelters, from FEMA 361 in its entirety. This appendix contains methods for calculating risk assessment for tornadoes and hurricanes. Pursuant to Minn. Stat. §327.20, subd. 1, item 6, manufactured home parks with less than 10 manufactured homes are required to have a plan for shelter or evacuation during periods of severe weather conditions, such as tornadoes, high winds, or floods. Minn. Stat. § 327.20, subd. 1, item 7, requires manufactured home parks with ten or more manufactured homes to provide a safe place of shelter or a evacuation plan to a safe place of shelter within a reasonable distance from the park for periods of severe weather conditions, such as tornadoes and high winds. Therefore, a cost/benefit analysis is not necessary.

Subp. 9. FEMA 361 Appendix C. This subpart deletes Appendix C, Case Study I – Stand-Alone Community Shelter (North Carolina), from FEMA 361 in its entirety because the conditions applicable to North Carolina do not apply in Minnesota.

Subp. 10. FEMA 361 Appendix D. This subpart deletes Appendix D, Case Study II – School Shelter Design (Kansas), from FEMA 361 in its entirety because the conditions applicable to Kansas do not apply in Minnesota.

Repealer: The proposed rules repeal Minn. R. part 1370.0190 because FEMA 361 contains provisions regarding the minimization of fire danger, so the rule part is no longer needed.

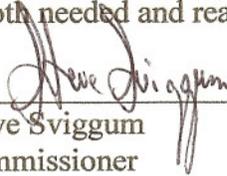
The proposed rules repeals Minn. R. part 1370.0220 because FEMA 361 contains provisions regarding ventilation requirements, so the rule part is no longer needed.

Effective date: Pursuant to Minn. Stat. § 326B.13, subdivision 8, the proposed rules are “effective 180 days after the filing of the rule with the secretary of state under section 14.16 or 14.26” or a later date if provided. The Department did not determine a specific later date for the rules to become effective since it is difficult predict when the rules will be filed with the Secretary of State. The Department does intend to publish its notice of adoption 180 days or more after the date the rules are filed with the Secretary of State.

CONCLUSION

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

June 10th, 2010



Steve Sviggum
Commissioner