

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DEPARTMENT OF SAFETY AND : CLEARINGHOUSE RULE 13-105
PROFESSIONAL SERVICES :**

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

These rule revisions include updated information on how municipalities and fire departments are to obtain and use a required format for submitting self-certification input to the Department in order to demonstrate eligibility for fire-department dues payments under sections 101.573 and 101.575 of the Statutes.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

These revisions to chapter SPS 314 would primarily update the incorporated National Fire Protection Association's NFPA 1 fire prevention code from the 2009 edition to the 2012 edition. This update would advance the quality of new and existing public buildings and places of employment in accordance with (1) the Department's obligation under section 101.02 (15) (j) of the Statutes to promulgate construction, repair, and maintenance standards that will render these facilities safe; and (2) the Department's authority under section 101.14 (1) (a) of the Statutes to make reasonable orders for the repair or removal of any buildings or other structures or combustible or explosive materials or inflammable conditions which are dangerous to any other building or premises or to any occupants, or which would hinder firefighters during a fire.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The Department held a public hearing on January 27, 2014. The following people either testified at the hearing, submitted written comments, or did both:

Ed Ruckriegel, representing the City of Madison Fire Department.

Joel Meier, representing the Professional Fire Fighters of Wisconsin.

Tod Doebler, representing the Wisconsin State Fire Inspectors Association.

Gregg Cleveland, chairman of the Department's SPS 314 Advisory Council – and representing the Wisconsin State Fire Chiefs' Association.

Jerry Deschane, representing the Wisconsin Builders Association.

David Bloom, legislative liaison, representing the Wisconsin State Fire Chiefs' Association.

In addition, Jim Boullion, representing the Associated General Contractors of Wisconsin, registered in favor of the proposed rules.

SUMMARY OF HEARING COMMENTS:

The Department summarizes the comments received either by hearing testimony or by written submission as follows:

1. The representatives of the fire service supported adopting the 2012 edition of NFPA 1, but opposed deleting its requirements in section 11.10 for two-way radio-communication enhancement systems. It was noted that the roughly \$20,000 cost was a minimal cost for a million-dollar building. They stated that as the Wisconsin fire service continues to become exposed to more incidents in high-rise and large industrial buildings, such as fires, emergency medical calls, and active shooter events, the need to coordinate with the building representatives and law enforcement will be critical for the successful outcome of these incidents. And, as buildings become larger and more complex, the ability of responder's radios to communicate becomes more difficult. Removing these requirements puts the health and safety of firefighters at risk when working an incident in any building with sporadic or no ability to communicate by radio. These systems are then a lifeline for firefighting crews inside those buildings. These systems also benefit police and emergency medical technicians in any of their tactical situations. The significant loss of life due to inadequate communications and other circumstances on September 11th, and the death of six firefighters in a warehouse fire in Massachusetts demonstrated that having effective communications in these buildings is a life-safety issue for firefighters. To place the financial burden of providing communications in these buildings on local taxpayers is not the answer to address this issue. Property owners should share in the responsibilities to address their communications needs when they know their buildings do not allow effective communications by 1st responders.

The representative of the Wisconsin Builders Association supported moving forward with adopting the proposed rule revisions, and argued that the need for two-way radio-communication enhancement systems is currently determined adequately on a case-by-case basis at the local level. There are ongoing maintenance issues with these systems, and the building industry prefers to retain the current practice instead of adopting a statewide mandate.

2. The fire service representatives also opposed deleting the NFPA 1 chapter 15 criteria for fire department service delivery concurrency evaluations. This criteria would provide local officials and other stakeholders with a responsible approach to determining what may be needed to extend proper fire department services to areas proposed for development, in a cost-effective manner. Growth is essential to a community, but should occur in a way that enables delivering the services which are needed to protect the lives and property of the community.

The building-industry representative recommended continuing to evaluate the adequacy of fire department delivery services for proposed developments during the current comprehensive process that also includes consideration of other services, such as water and sewer components – rather than applying a statewide mandate through adoption of the NFPA 1 chapter 15 criteria.

3. The fire service representatives recommended retaining the prohibition in NFPA 1 section 10.11.6.2 against storing portable, fuel-fired grills on exterior decks and balconies – instead of modifying it in section SPS 314.10 (2r) to only prohibit storing the fuel there. Adopting this modification will result in gas cylinders in high-rise apartment and condominium buildings being brought into dwelling units and stored in closets or some other place where they will be out of sight. This will create a fire hazard for the residents of the building as well as the firefighters who respond to a fire incident in those buildings. There also will be noncompliance with the requirement to remove the fuel, which will result in unwanted fires.

4. The fire service representatives also recommended expanding the rule revisions to include the restrictions that the Department's SPS 314 advisory council endorsed for addressing fires in upholstered furniture which is not designed for outside use, on porches, balconies, roofs, and other areas. These restrictions were based on a national-level study of campus-related fire incidents, as published by Campus Firewatch, which documented the frequency and fatal nature of these fires, especially in off-campus student housing. It was noted that only one incident was from Wisconsin, from January 2000 to February 2013.

5. One of the fire service representatives recommended expanding the rules so as to not limit fire inspectors to issuing stop-work orders only where fire hazards or explosion hazards occur, which also widens impressions that certified building inspectors have a higher level of knowledge than fire inspectors. He also recommended that the Department soon address the NFPA 1 design requirements that have been deferred to the Department's commercial-building program.

RESPONSE TO PUBLIC COMMENTS:

1. The Department believes that the need for two-way radio-communication enhancement systems should be determined on a case-by-case basis, in part because of their associated costs. The code requirements in chapter SPS 314 are retroactive, and the Department cannot justify placing this kind of financial burden on new- and existing-building owners. In addition, chapter SPS 314 establishes minimum statewide requirements for fire prevention, and local communities can adopt additional requirements to suit their needs.

Consequently, the Department is not proposing to expand chapter SPS 314 now to include the requirements in NFPA 1 for these systems.

2. The Department believes that evaluating the adequacy of fire-department delivery services for proposed developments should occur during the planning process for any construction project that would significantly affect a community. This process would take place at the local planning community level and may include consideration of other local services such as water and sewer facilities. Local communities can adopt requirements for this planning process to suit their needs, and those requirements can apply in addition to the minimum statewide requirements in chapter SPS 314. Therefore the Department is not proposing to expand chapter SPS 314 now to include these requirements from NFPA 1.

3. The Department is sensitive to the fire service's concerns relating to storing portable, fuel-fired grills on exterior decks and balconies, but believes that prohibiting the storage of grills which are not in use is too restrictive on grill owners. However, local communities can adopt additional requirements to suit their needs. Consequently, section SPS 314.10 (2r) is not changed in response to this concern.

4. The Department believes that the fire hazard associated with exterior use of upholstered furniture which is designed only for interior use is not substantial enough to warrant prohibiting exterior use. However, local communities can adopt additional requirements to suit their needs, and the proposed rule revisions are not changed in response to this comment.

5. The limitations in chapter SPS 314 relating to the authority of fire inspectors are constrained by corresponding statutory criteria. Under section 101.12 (3) (g) of the Statutes, the Department is required to determine and certify the competency of all inspectors who perform construction inspections for public buildings and equipment for a city, village, town, or county. The Department credentials these inspectors under section SPS 305.61 as certified commercial building inspectors, who are then authorized therein to conduct inspections of public buildings and places of employment for the purpose of administering and enforcing chapters SPS 361 to 366 and 375 to 379. The draft rule revisions are not changed in response to this comment.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 2.a.

Response: The Note is revised to more clearly show that it contains only explanatory material rather than any substantive material.

Comment: 2.d.

Response: The treatment clause is not changed to include "(1)" before "title," because the title "Building services" is being created for the section rather than the subsection.

Comment: 2.e.

Response: The Legislative Reference Bureau plans to replace the outdated, quoted statutory text in the Appendix with whatever corresponding statutory text is in effect when these rule revisions are published in the *Wisconsin Administrative Register*. According to the LRB, replacing the subject Note with a treatment section containing all of the outdated statutory excerpts currently in the Appendix, and then striking all outdated text and underscoring all currently new text, would not assist them in this update of this Appendix material.

Comment: 5.b.

Response: The Department is determining whether fire departments are complying with the fire-reporting requirements in section 101.141 of the Statutes by (1) newly requiring municipalities and fire departments to specifically attest to that compliance in the self-certification input they annually provide to the Department through the Department's Fire Program Online System, and by (2) specifically including this element in the checklist and onsite audit procedure steps that Department staff refer to during each audit of a municipality or fire department.

All of the remaining recommendations in the Clearinghouse Report were accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules were not submitted to the Small Business Regulatory Review Board.

These rules will not have a significant economic impact on a substantial number of small businesses.

File reference: SPS 314/Legislative Report4