

Clearinghouse Rule 09-104

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 14.001 (2) (b), 14.01 (2) (a) 1. (intro.) and a. and (5), 22.38 (3) (d) and 63.0102 (1) and Note;

to renumber Comm 14.01 (2) (a) 3., (c) to (e) and (f) 1., 3. and 4., (4), (6) to (11), (11) (b) 6. to 10. and (12); 14.03 (intro.), (1) to (5) and (8) to (10); 14.10 (2); 22.38 (3) (e); 61.60 (2) (a) 4., (b) 3. and (e); 61.61 (2) (a) 4. and (b) 4. and (3); and 62.3500 (3) (b) to (d);

to renumber and amend Comm 14.001 (2) (a); 14.01 (2) (intro.), (a) 1. b., 2. and Note and 4. and (f) (intro.) and 2., (3) and Note, (4) (a) 1., (6) Note [1], (11) (b) 3., 5. (title) and s., 6. c., 7. and Note and (e), and (12) (a) 1. a. and 2. a., (c) 1. Note, (d) 2. and Note and (f) 1. Note and 2. Note; 14.03 (6) and (7); 61.60 (2) (a) 3. and 66.0101 (2);

to amend Comm 14 subchapter I (title) and 14.001 (1) (a) and Note and (b); subchapter II (title) and Note; 14.01 (1) (a), (c) (intro.) and 5. and Note, (e) and (f); 14.10 (1) Note; 14.13 Note; 14.20; 21.03 (1) (c); 21.25 (8) (e) 2.; Table 21.25–H footnote 5; Table 21.25–J footnote 2; 21.25 (9) (b) 3.; Figure 21.25–G (c); 21.25 (9) (c) 4.; 21.26 (8) (a) 3. and Note; 22.10 (17); Table 22.31-1 footnote c and Table 22.31-4 footnote d; 22.33 (1) (title), (1) and (2); 22.40 (3) Note; 23.08 (4); 61.60 (2) (c) (intro.) and (d) 1.; 61.61 (2) (a) 3.; 62.0202 (1) (a) and 66.0101 (2) (title);

to repeal and recreate Comm 14.01 (1) Note [3], (7) Note and (9) (a) and (b); and

to create Comm 14.01 (1) (a) Note and (g) and Notes, (2) (b) (intro.), (3) (intro.), (4) Note [2], (6) (intro.), (13) (b) 3. Note and 6. and Note; 14.03 (2) (intro.); 14.10 (2) and Note and (3) and Note; 14.50; 61.60 (2) (a) 3. and 4., (b) 3. and (e); 61.61 (2) (a) 4. and 5. and (b) 3. and (3); 62.1403; 62.3500 (3) (b); 63.0504 (3); and 66.0101 (2) (b) and Note – relating to fire prevention; recordkeeping for fires; fire suppression for mobile kitchens; structural, ventilating, and vapor-barrier requirements for one- and two-family dwellings; air barriers and local enforcement for commercial buildings; and previously constructed buildings that are converted to community-based residential facilities; and affecting small businesses.

Analysis of Proposed Rules

1. Statutes Interpreted.

Sections 19.21 (4) (b); 101.02 (15) (j); 101.12 (3); 101.127; 101.14 (1) (a), (am) and (b) and (2) (c) 1.; 101.141, and 101.63 (1).

2. Statutory Authority.

Sections 101.02 (15) (j), 101.127, 101.14 (1) and (2) (c) 1., 101.63 (1), and 227.11 (2) (a).

3. Explanation of Agency Authority.

Section 101.02 (15) (j) of the Statutes requires the Department to promulgate rules for the construction, repair and maintenance of safe public buildings and places of employment.

Section 101.127 of the Statutes requires the Department to adopt rules for previously constructed buildings that are converted to homelike community-based residential facilities.

Section 101.14 (1) of the Statutes authorizes the Department 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 occupants or which hinder firefighters in case of fire.

Section 101.14 (2) (c) 1. of the Statutes requires the Department to promulgate by rule any exceptions where fire prevention inspections can be performed less frequently than once in each non-overlapping 6-month period per calendar year.

Section 101.63 (1) of the Statutes requires the Department to adopt rules which establish standards for the construction and inspection of one- and two-family dwellings.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Those Statutes include section 101.02 (15) (j), which addresses construction of safe public buildings and places of employment; section 101.14 (1) (am), which establishes a fire-suppression-system exemption for low-use mobile kitchens; and 101.141, which addresses record keeping for all building-related fires. Section 19.21 (4) (b) establishes a minimum time period for cities, villages and towns to retain public records.

4. Related Statute or Rule.

The Department has various statutory obligations and rules relating to fire prevention and building safety – which include the design and construction requirements in chapters Comm 60 to 66 for public buildings and places of employment, as promulgated under sections 101.02 (15) (j) and 101.14 (4) of the Statutes; and the fire-prevention and inspection requirements in chapters Comm 10 and 14 for public buildings and places of employment, as promulgated under sections 101.14 (1) (a) and (2) of the Statutes.

5. Summary of Rule.

The proposed rules for chapter Comm 14 in this order primarily update the incorporated National Fire Protection Association's NFPA® 1 fire prevention code from the 2006 edition to the 2009 edition. The rules also specify (1) the information that all fire departments must report to the United States Fire Administration (USFA) for all fires that involve buildings; (2) an occupancy period of no more than six months, for seasonal occupancies to be eligible for being inspected only once per calendar year; (3) a time period of at least seven years, for cities, villages and towns to retain records for fire prevention inspections and fire dues entitlement; (4) the maximum size and

usage, and minimum record keeping, for a mobile kitchen that is allowed to not have an exhaust hood and corresponding automatic fire suppression system; (5) some minor cross-reference and other editorial corrections in the requirements for one- and two-family dwellings; (6) submittal of local ordinances where municipalities choose to perform plan review or inspection of commercial buildings; (7) requirements for air barriers in the exterior walls of commercial buildings; and (8) design requirements for previously constructed buildings that are converted to a community-based residential facility for five to 20 residents.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

The Federal Fire Prevention and Control Act of 1974 (P.L. 93-498) authorizes the National Fire Data Center in the USFA to gather and analyze information on the magnitude of the nation's fire problem, as well as the detailed characteristics and trends of the problem. The Act further authorizes the USFA to develop uniform data reporting methods, and to encourage and assist state agencies in developing and reporting data. In order to carry out the intentions of the Act, the National Fire Data Center has established the National Fire Incident Reporting System.

An Internet-based search of the 2007 and 2008 editions of the *Federal Register* did not reveal any currently proposed regulations regarding fire investigation reports, fire inspections for buildings that are occupied seasonally, or commercial cooking equipment for mobile kitchens.

7. Comparison With Rules in Adjacent States.

Illinois

The State of Illinois is applying the 2006 edition of the *International Fire Code*[®] (IFC), excluding Chapter 4, to public schools. No references were found relating to adoption of NFPA 1.

An Internet-based search of the terms “fire reports,” “seasonal occupancies,” “fire inspections,” “fire records,” “mobile kitchens,” “fire incident reporting,” “fire incidents,” “fire reports,” “incident reporting,” and “NFIRS reports” yielded the following results: The officer making investigations must notify the Office of the State Fire Marshal by the 15th of the month following the occurrence of fire. The notification must include a statement of all facts relating to the cause and origin of the fire, and such information as may be called for in a format approved or on forms provided by the Office. Reporting of such information must be based upon the nationally recognized standards of the United States Fire Administration’s National Fire Incident Reporting System. OSFM no longer accepts data via e-mail or data on disks. Fire departments are trained to upload their own data directly to the USFA. Reporting “No Activity” is also required. No department can receive any state or federal funding without first being a faithful reporter to the NFIRS program.

An Internet-based search of the Illinois Administrative Code revealed that Illinois has adopted the NFPA 101[®] *Life Safety Code*[®], which does address commercial cooking devices, but does not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use, nor does it specifically address fire inspection of seasonal occupancies.

Iowa

The State of Iowa has adopted the 2000 edition of the IFC. The only reference found for NFPA 1 related to use by local municipalities.

An Internet-based search of the terms “fire reports,” “seasonal occupancies,” “fire inspections,” “fire records,” “mobile kitchens,” “fire incident reporting,” “fire incidents,” “fire reports,” “incident reporting,” and “NFIRS reports” yielded the following results: For reports of fires and emergency responses, the State Fire Marshal’s Division is to be notified immediately when death, serious bodily injury, or property damage in excess of two hundred thousand dollars has occurred as a result of a fire or if arson is suspected. For all other fires causing fifty dollars or more in damage or emergency response by the fire service, a report must be filed within ten days following the end of the month. The penalty for non-reporting is a simple misdemeanor. Based on course offerings for Iowa Fire School, Iowa follows NFIRS and encourages use Firehouse Software®. Fires are investigated by city or township officials, and reports are filed with the State Fire Marshal within a week unless an extension is granted. These fire records are on file in the Fire marshal’s office, and some data is not considered accessible for public record.

The IFC, as adopted by Iowa, does not specifically address fire inspection of seasonal occupancies. The IFC does address commercial cooking devices, but does not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use.

Michigan

The State of Michigan has adopted the 2006 edition of NFPA 1.

An Internet-based search of the terms “fire reports,” “seasonal occupancies,” “fire inspections,” “fire records,” “mobile kitchens,” “fire incident reporting,” “fire incidents,” “fire reports,” “incident reporting,” and “NFIRS reports” yielded the following results: Immediately after the occurrence of fire resulting in loss of life or property, the chief must make and file with the State Fire Marshal a complete fire incident report of the fire. The report must be made on and according to modules supplied by the State Fire Marshal. Violation of these requirements is a misdemeanor. Michigan requires local police and fire departments to report incidents such as fires to the Michigan Bureau of Fire Services, which maintains these records.

An Internet-based search of the terms “fire inspections,” “seasonal occupancies” and “mobile kitchens” yielded no results of Michigan regulations specifically regarding these issues. An Internet-based search of the Michigan Administrative Rules revealed that they do not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use, nor do they specifically address fire inspection of seasonal occupancies.

Minnesota

The State of Minnesota has adopted the 2006 edition of the IFC. No references were found relating to adoption of NFPA 1.

An Internet-based search of the terms “fire reports,” “seasonal occupancies,” “fire inspections,” “fire records,” “mobile kitchens,” “fire incident reporting,” “fire incidents,” “fire reports,” “incident reporting,” and “NFIRS reports” yielded the following results: Minnesota requires local officers to investigate fires and to file a report with the State Fire Marshal within a

week. The Fire Marshal maintains these records and compiles statistics based on the data, which is available to the public. However, as of January 1, 2009, Minnesota began providing a statewide software program for fire reporting created by ImageTrend Inc. It is recommended that incidents be reported to the State Fire Marshal Division monthly.

An Internet-based search of the terms “fire inspections,” “seasonal occupancies” and “mobile kitchens” yielded no results of Minnesota regulations specifically regarding these issues. The 2006 edition of the IFC, as adopted by Minnesota, does not specifically address fire inspection of seasonal occupancies. The IFC does address commercial cooking devices, but does not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these proposed rules were derived from and consisted of comparing the 2006 and 2009 editions of NFPA 1, and incorporating the applicable criteria from 2007 Wisconsin Acts 75 and 173.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary documents that were used to determine the effect of the proposed rules on small businesses were the 2006 and 2009 editions of NFPA 1; 2007 Wisconsin Act 75, which addresses record keeping for all building-related fires; and 2007 Wisconsin Act 173, which establishes a fire-suppression-system exemption for small, low-use mobile kitchens.

10. Effect on Small Business.

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the 2009 edition of NFPA 1, as modified in chapter Comm 14, is not expected to impose costs that substantially exceed the costs imposed by the currently adopted 2006 edition; the record-keeping requirements for fires and fire-prevention inspections apply only to fire departments and municipalities; and the record-keeping requirement for low-use mobile kitchens applies only where an exemption is desired from installing an exhaust hood and corresponding automatic fire suppression system.

11. Agency Contact Person.

Joe Hertel, Wisconsin Department of Commerce, Bureau of Program Development, P.O. Box 2689, Madison, WI, 53701-2689; telephone (608) 266-5649; e-mail joe.hertel@wisconsin.gov.

12. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wisconsin.gov, no later than December 23, 2009. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of

Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI
53708-0427.

File reference: Comm 14/rules, analysis PH