

# STATEMENT OF SCOPE

## Department of Safety & Professional Services

**Rule No.:** SPS 303, 305, 314, 316, 318, 340, 341, 343, 345, 361-366, 367-372, 375-379, and 381-387

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**Relating to:** Commercial Building Code

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**Rule Type:** Permanent

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### 1. Finding/nature of emergency:

N/A

### 2. Detailed description of the objective of the proposed rule:

The primary objective of this rulemaking project is to evaluate and update the *Wisconsin Commercial Building Code*, chapters SPS 361-366. This rulemaking update is intended to keep this Code consistent with dynamic, contemporary regional and national construction and fire prevention practices and standards, and with legislation enacted since the previous update of this Code. The update is also needed in order to meet the content and timeliness requirements for the energy conservation provisions of this Code as established in sections 101.027 (2) and (3) of the Wisconsin Statutes.

In addition, the project is expected to evaluate other administrative codes of the Department that may be affected by this update of the *Wisconsin Commercial Building Code*, including at least chapters SPS 303, 305, 314, 316, 318, 340, 343, and 345, relating to administrative procedures; licenses, certifications and registrations; fire prevention; electrical; elevators, escalators, and lift devices; gas systems; boilers and pressure vessels; anhydrous ammonia; mechanical refrigeration; rental unit energy efficiency; solar energy systems; cleaning methods for historic buildings; buildings constructed prior to 1914; and plumbing; respectively. This evaluation may result in changes and updates of the rules in these chapters. The objectives of this rule project may be incorporated into one or more rule packages.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The *Wisconsin Commercial Building Code* contains standards for the design, construction, use, maintenance, alteration, and inspection of public buildings and places of employment. This Code currently generally incorporates by reference the 2015 edition of the national-level model building code suite produced by the International Code Council (ICC)<sup>®</sup>. This suite includes the *International Building Code*<sup>®</sup> (IBC<sup>®</sup>), the *International Energy Conservation Code*<sup>®</sup> (IECC<sup>®</sup>), the *International Mechanical Code*<sup>®</sup> (IMC<sup>®</sup>), the *International Fuel Gas Code*<sup>®</sup> (IFGC<sup>®</sup>), and the *International Existing Buildings Code*<sup>®</sup> (IEBC<sup>®</sup>); with some exceptions deemed prudent by the department or as required due to state statutes.

The primary purpose of the codes under consideration is to protect public safety, health, and welfare. Periodic review and update of these codes is necessary to ensure that they still achieve that purpose. In addition, the review and update allows the opportunity to recognize and stay current with new construction products and practices. The review and update under this scope statement will include evaluation of the 2018 and 2021 editions of the above-mentioned model building code suite for

incorporation. The primary alternative would be to not perform this rule-review process. This would reduce the public benefits that would otherwise occur by performing this review.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wis. Stat. § 227.11 (2) (a) empowers the Department of Safety and Professional Services to promulgate rules interpreting the provision of any statute the Department enforces or administers.

Wis. Stat. § 101.02 (1) (b) states, "[t]he department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Wis. Stat. § 101.02 (15)

“(a) The department has such supervision of every employment, place of employment and public building in this state as is necessary adequately to enforce and administer all laws and all lawful orders requiring such employment, place of employment or public building to be safe, and requiring the protection of the life, health, safety and welfare of every employee in such employment or place of employment and every frequenter of such place of employment, and the safety of the public or tenants in any such public building. This paragraph does not apply to occupational safety and health issues covered by standards established and enforced by the federal occupational safety and health administration...

(h) The department shall investigate, ascertain, declare and prescribe what safety devices, safeguards or other means or methods of protection are best adapted to render the employees of every employment and place of employment and frequenters of every place of employment safe, and to protect their welfare as required by law or lawful orders.

(i) The department shall ascertain and fix such reasonable standards and shall prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employees in employments and places of employment or frequenters of places of employment.

(j) The department shall ascertain, fix and order such reasonable standards or rules for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe...”

Wis. Stat. § 101.02 (25) states that “[t]he department may promulgate rules prescribing procedures for approving new building materials, methods, and equipment.

Wis. Stat. § 101.025. “(1) Notwithstanding s. 101.02 (1) and (15), any rule which requires the intake of outside air for ventilation in public buildings or places of employment shall establish minimum quantities of outside air that must be supplied based upon the type of occupancy, the number of occupants, areas with toxic or unusual contaminants and other pertinent criteria determined by the department. The department shall set standards where the mandatory intake of outside air may be waived. The department may waive the requirement for the intake of outside air where the owner has demonstrated that the resulting air quality is equivalent to that provided by outdoor air ventilation. The department may not waive the mandatory intake of outside air unless smoking is prohibited in the building or place of employment. In this subsection "smoking" means carrying any lighted tobacco product...

(3) The department may order the owner of any public building or place of employment which is the subject of a complaint under sub. (2) to comply with ventilation requirements adopted under sub. (1) unless the owner can verify, in writing, that the elimination of the provision for outside air in the structure in question does not impose a significant detriment to the employees or frequenters of the structure and that the health, safety and welfare of the occupants is preserved. Upon receipt of a written verification

from the owner, the department shall conduct an investigation, and the department may issue an order to comply with ventilation requirements under sub. (1) if it finds that the health, safety and welfare of the employees or frequenters of the structure in question is best served by reinstating the ventilation requirements for that structure.

(4) For ventilation systems in public buildings and places of employment, the department shall adopt rules setting: (a) A maximum rate of leakage allowable from outside air dampers when the dampers are closed. (b) Maintenance standards for ventilation systems in public buildings and places of employment existing on April 30, 1980.”

Wis. Stat. § 101.027 (2) “The department shall review the energy conservation code and shall promulgate rules that change the requirements of the energy conservation code to improve energy conservation. No rule may be promulgated that has not taken into account the cost of the energy conservation code requirement, as changed by the rule, in relationship to the benefits derived from that requirement, including the reasonably foreseeable economic and environmental benefits to the state from any reduction in the use of imported fossil fuel. The proposed rules changing the energy conservation code shall be submitted to the legislature in the manner provided under s. 227.19. In conducting a review under this subsection, the department shall consider incorporating, into the energy conservation code, design requirements from the most current national energy efficiency design standards, including the International Energy Conservation Code or an energy efficiency code other than the International Energy Conservation Code if that energy efficiency code is used to prescribe design requirements for the purpose of conserving energy in buildings and is generally accepted and used by engineers and the construction industry.”

Wis. Stat. § 101.053 (2) “The department shall promulgate rules revising the commercial building code to establish separate standards for the construction and inspection of recreational and educational camps. The standards established in the rules shall take into account the uses, including seasonal use, that are unique to recreational and educational camps.

Wis. Stat. § 101.055 (3) (a) “The department shall adopt, by administrative rule, standards to protect the safety and health of public employees. The standards shall provide protection at least equal to that provided to private sector employees under standards promulgated by the federal occupational safety and health administration, but no rule may be adopted by the department which defines a substance as a "toxic substance" solely because it is listed in the latest printed edition of the national institute for occupational safety and health registry of toxic effects of chemical substances. The department shall revise the safety and health standards adopted for public employees as necessary to provide protection at least equal to that provided to private sector employees under federal occupational safety and health administration standards, except as otherwise provided in this paragraph. Notwithstanding ss. 35.93 and 227.21, if the standards adopted by the department are identical to regulations adopted by a federal agency, the standards need not be published in full in the Wisconsin administrative code and register as provided in ss. 35.93 and 227.21 if the identical federal regulations are made available to the public at a reasonable cost and promulgated in accordance with ch. 227, except s. 227.21. The department may provide to the legislative reference bureau one or more Web addresses to provide electronic access to any standards adopted under this paragraph for publication in conjunction with the publication of the Wisconsin administrative code and register under s. 35.93.”

Wis. Stat. § 101.10 (2) “The department shall promulgate rules that prescribe reasonable standards relating to the safe storage and handling of anhydrous ammonia.”

Wis. Stat. § 101.12 (3m) (a) “The department shall promulgate rules for the administration of a program to certify 2nd class cities to perform the examination of essential drawings, calculations and specifications in accordance with sub. (1).”

Wis. Stat. § 101.12 (3m) (e) “The department shall by rule set fees, to be collected by the 2nd class city and remitted to the department, to meet the department’s costs in enforcing and administering its duties under sub. (3) (am) and this subsection.”

Wis. Stat. § 101.12 (3o) (b) “The department shall establish requirements for cities, villages, towns, and counties to electronically renew their agent appointments and certifications every 5 years. The process shall allow cities, villages, towns, and counties with agent appointments and certifications made 5 years or more before April 5, 2018, to renew those agent appointments and certifications within deadlines specified by the department.”

Wis. Stat. § 101.12 (6) (b). “The department shall promulgate rules relating to the enforcement of this subchapter and subch. IV and ch. 145 for public schools constructed before 1930 and establishing life–safety plans for all public schools.”

Wis. Stat. § 101.1206.

“(1) The department shall establish statewide standards for erosion control at building sites that have a land disturbance that is less than one acre in area and that are for the construction of public buildings and buildings that are places of employment... (7) [t]he department shall promulgate rules for the administration of this section.”

Wis. Stat. § 101.121 (3) (a) “For any rule under this chapter or ch. 145 which applies to buildings, the department may provide an alternative rule which accomplishes the same general purpose and applies only to qualified historic buildings. These alternative rules shall permit, to the maximum extent possible, the use of original or duplicates of original materials, the maintenance of the original appearance of all components of a historic building and the use of original construction techniques. The department shall consult with the historic building code council regarding the development of alternative rules. All alternative rules taken together constitute the historic building code.”

Wis. Stat. § 101.1215 (3) “The department, in consultation with the state historical society and the department of administration, shall promulgate rules on the use of abrasive cleaning methods on the exterior of qualified historic buildings. The department may permit the use of any specific abrasive cleaning method on any specific building material only if it determines that the abrasive cleaning method will not cause irreparable damage to the building material to which it is applied.”

Wis. Stat. § 101.125 (2m) “The department shall promulgate rules regulating safety glazing material manufactured, distributed, imported, sold, or installed for use in a hazardous location.”

Wis. Stat. § 101.126 (1) “The department shall establish, by rule, requirements for a person engaging in any of the following to provide adequate space in or adjacent to the building for the separation, temporary storage and collection of the materials listed in s. 287.07 (3) or (4), likely to be generated by the occupants of the building:

(a) The construction of a public building.

(b) An increase in the size of a public building by 50 percent or more.

(c) An alteration of 50 percent or more of the existing area of a public building that is 10,000 square feet or more in area.”

Wis. Stat. § 101.13 (1m) (a) “[T]he department shall by rule provide minimum requirements to facilitate the use of public buildings and places of employment by physically disabled persons where traffic might reasonably be expected by such persons.”

Wis. Stat. § 101.132 (2) (e) 2. ““The department shall promulgate rules establishing minimum accessibility requirements for the design and construction of covered multifamily housing and the remodeling of housing that are consistent with this subsection, that incorporate the applicable standards under ANSI A117.1 and that set forth permit and variance procedures for purposes of par. (c).”

Wis. Stat. § 101.132 (2) (c) 1. “Plans and specifications for all covered multifamily housing subject to par. (a) and proposed remodeling subject to par. (b) shall be submitted to the department or its authorized representative for examination and approval before commencing work. The department shall promulgate rules that specify the materials to be included in the submittal, the procedures to be followed upon receipt

of a submittal, reasonable time limitations for reviewing submittals and issuing or denying permits and qualifications for authorized representatives.”

Wis. Stat. § 101.135 (1) “The department shall promulgate rules that specify uniform dimensions, design and other characteristics for signs used to identify firewalls.”

Wis. Stat. § 101.14 (1) (a) “The department may make reasonable orders for the repair or removal of any building or other structure which for want of repair or by reason of age or dilapidated condition or for any other cause is especially liable to fire, and which is so situated as to endanger other buildings or property and for the repair or removal of any combustible or explosive material or inflammable conditions, dangerous to the safety of any building or premises or the occupants thereof or endangering or hindering fire fighters in case of fire.”

Wis. Stat. § 101.14 (4) (a) “The department shall make rules, pursuant to ch.227, requiring owners of places of employment and public buildings to install such fire detection, prevention or suppression devices as will protect the health, welfare and safety of all employers, employees and frequenters of places of employment and public buildings.”

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The staff time needed to revise Wisconsin’s Commercial Building Code is expected to be 2,000 hours. This time includes research, drafting the rule revisions, consulting with stakeholders and the commercial code council, processing the rule revisions through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop rule changes.

**6. List with description all entities that may be affected by the proposed rule:**

This rule project may affect any business or other entity that is involved in the ownership, design, construction, use, maintenance, alteration, or inspection of a commercial building.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

**Energy Conservation Requirements**

The portion of the USC relating to energy conservation standards for new buildings is 42 USC sections 6831 to 6837. A main purpose of the regulations in these sections is to encourage States and local governments to adopt and enforce energy conservation standards through their building codes and other construction control mechanisms.

**Accessibility Requirements**

Both [28 CFR 35](#) and [28 CFR 36](#) require public buildings and commercial facilities – including government-owned and -operated buildings and facilities – to be designed, constructed, and altered in compliance with the accessibility construction regulations specified under the federal Americans with Disabilities Act Accessibility Guidelines.

The purpose of [24 CFR 40](#) and [24 CFR 41](#) is to provide technical guidance on the design, construction, and alteration of dwelling units as required by the federal Fair Housing Amendments Act of 1988. The American National Standard: Accessible and Usable Buildings and Facilities, (ICC/ANSI A117.1) that is incorporated into [24 CFR 100](#) by reference is the current federal technical standard for the design of housing and other facilities which are accessible to persons with disabilities as referenced in the federal Fair Housing Act.

Adoption of the International Building Code (IBC) and the amendments to it that are included in chapter SPS 362 is intended to ensure that the Wisconsin design, construction, and

alteration requirements relating to accessibility for public buildings and places of employment are equivalent to these applicable federal laws and regulations.

**Proposed Federal Regulations and Amendments**

The ICC actively monitors proposed changes to the federal standards affecting accessibility and will include these changes in future editions of the IBC and the corresponding ICC/ANSI – Accessible and Usable Buildings and Facilities Standard.

**8. Anticipated economic impact of implementing the rule:**

The anticipated economic impact of implementing this rule is moderate. The rule is likely to have a significant impact on a substantial number of small businesses.

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Approved for Publication:

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Secretary

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Date