STATEMENT OF SCOPE

Department of Safety and Professional Services

Rule No. : Chapters SPS 303, 305, 314, 316, 318, 340, 341, 343, 345, 361-366, 367-372, 375-379, and 381-383

Relating to: The Wisconsin Commercial Building Code and affecting small business

Rule Type: Permanent

1. 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.

2. 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 incorporates by reference the 2009 edition of the national-level model building code suite produced by the International Code Council (ICC)®. This suite includes the *International Building Code*® (IBC®), the *International Energy Conservation Code*® (IECC®), the *International Mechanical Code*® (IMC®), the *International Fuel Gas Code*® (IFGC®), and the *International Existing Buildings Code*® (IEBC®).

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 2015 edition 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.

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

Section 101.02 (1) of the Statutes reads, "The 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."

Section 101.02 (15) (j) of the Statutes reads, "The department shall ascertain, fix and order such reasonable standards or rules for constructing, altering, adding to, repairing, and maintaining public buildings and places of employment in order to render them safe."

Section 101.027 (2) of the statutes reads, in part, "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. 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."

Section 101.10 (2) of the Statutes reads, "RULES, The department shall promulgate rules that prescribe reasonable standards relating to the safe storage and handling of anhydrous ammonia."

Section 101.13 (1m) (a) of the Statutes reads, "Except as provided in par. (b), the 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".

Section 101.132 (2) (e) 2. of the Statutes reads, "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)."

Section 101.132 (2) (c) 1. of the Statutes reads, in part, "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."

Section 101.14 (1) (a) of the Statutes reads, "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."

Section 101.14 (4) (a) of the Statutes reads, "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."

Sections 101.973 (1) of the Statutes reads, "(the department shall) Promulgate rules that establish standards for the construction of multifamily dwellings and their components."

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

The Department estimates approximately 2000 hours will be needed to perform the review and develop any needed rule changes. The Department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

5. List with description of all entities that may be affected by the proposed rule:

The proposed rules may affect any business or other entity involved with the ownership, design, construction, use, maintenance, alteration, or inspection of public buildings – including multifamily dwellings – and places of employment.

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

General Building Code

- *Code of Federal Regulations* – An Internet-based search for "federal commercial building code" and "building code regulations" in the *Code of Federal Regulations* (CFR) did not identify any federal regulations pertaining to these topics.

- *Federal Register* – An Internet-based search for "federal commercial building code" and "building code regulations" in the *Federal Register* did not identify any proposed federal regulations pertaining to these topics.

Energy Conservation Requirements

- *United States Code* – 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. Under these USC sections, commercial buildings do not include multifamily residential buildings of three stories or less.

- *Federal Register* – In the *Federal Register* dated September 26, 2014 (pg. 57900), DOE published a final determination that "the 2013 edition of the ANSI/ASHRAE/IES Standard 90.1: *Energy Standard for Buildings, Except Low-Rise Residential Buildings*, would improve energy efficiency in buildings subject to the code compared to the 2010 edition of Standard 90.1. DOE has determined that buildings built to Standard 90.1–2013, as compared with buildings built to Standard 90.1–2010, would result in national source energy savings of approximately 8.5 percent and site energy savings of approximately 7.6 percent of commercial building energy consumption." The 2015 edition of the IECC, which is to be reviewed under this scope statement, incorporates the 2013 edition of Standard 90.1. This review will include review of any Wisconsin amendments to the IECC that are currently included in chapter SPS 363.

  In the *Federal Register* dated September 26, 2014 (pg. 57915), DOE published a preliminary determination that "the 2015 edition of the International Energy Conservation Code (IECC) would improve energy efficiency in buildings subject to the code compared to the 2012 edition. As noted above, the 2015 IECC – and any amendments to the IECC that are currently included in chapter SPS 363 – will be reviewed under this scope statement.

Accessibility Requirements

- *Code of Federal Regulations* – The portions of the CFR relating to accessibility in commercial buildings and facilities include the following:

  1. 28 CFR 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
  2. 28 CFR 36 – Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.
  3. 24 CFR 40 – Accessibility Standards for Design, Construction, and Alteration of Publicly Owned Residential Structures.

4. 24 CFR 41 – Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
5. 24 CFR 100 – Discriminatory Conduct Under the Fair Housing Act.

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, 2003 edition, (ICC/ANSI A117.1 – 2003) 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 to established federal regulations for accessibility* – The International Code Council actively monitors any proposed changes to the federal standards affecting accessibility, and routinely includes those changes in future editions of the IBC and its corresponding incorporated standard, ICC A117.1 – Accessible and Usable Buildings and Facilities, which has replaced the above ICC/ANSI A117.1 standard. The 2009 edition of the ICC A117.1 standard is incorporated into the 2015 edition of the IBC, and will consequently be evaluated under this scope statement.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

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.

Contact Person: Dan Smith, Rules Coordinator, daniel2.smith@wi.gov, (608) 261-4463.

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DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Dave Ross, Secretary

Approved for implementation at Madison, Wisconsin, this date:

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Dave Ross, Secretary

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