

**STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

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**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : CR 19-154  
DEPARTMENT OF SAFETY :  
AND PROFESSIONAL SERVICES :**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

N/A

**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:**

The proposed rule updates chs. SPS 305, 314, and 361 to 366 to require the periodic inspection and testing of fire and smoke dampers required under NFPA 1, NFPA 80, and NFPA 105 to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Department held a public comment period and conducted a public hearing on the statement of scope on November 1, 2019. The Department did not receive written comments or testimony concerning the statement of scope.

On January 8, 2020, the Department held a public hearing on the proposed rules. Written comments were received from the following individuals:

- David P. Malek, President of Malek & Associates Consultants, Inc.
- Jonathan Kowalski, Executive Director of the Sheet Metal and Air Conditioning Contractors' Association of Milwaukee, Inc.
- Robert G. DuPont, Founder of the Alliance for Regulatory Coordination.
- Julie Walsh, Executive Director of the Madison Area Mechanical & Sheet Metal Contractors Association.

Although generally supportive of the new requirement in the proposed rules, the comments included the following recommendations:

- The requirement should not apply to government officials performing inspections for the purpose of code administration.
- Individuals who conduct periodic inspection and testing of fire and smoke dampers should not be required to be certified as commercial building inspectors or fire detection, suppression, and prevention inspectors.
- The requirement should have a one-year delayed effective date to allow time for individuals to obtain the required certification.

The Department has revised the proposed rules as recommended above.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All Legislative Council recommendations have been incorporated into the proposed rule.

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

N/A

STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND	:	PROFESSIONAL SERVICES
PROFESSIONAL SERVICES	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 19-154)

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PROPOSED ORDER

An order of the Department of Safety and Professional Services to amend SPS 305.627 (1) and create SPS 314.001 (3) and 361.03 (16), relating to the inspection and testing of fire and smoke dampers.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Subchapter I of ch. 101, Stats.

**Statutory authority:**

Section 101.02 (1) (b) and (15) (j), Stats.

**Explanation of agency authority:**

Section 101.02 (1) (b), Stats., provides “[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 ...”

Section 101.02 (15) (j), Stats., provides “[t]he 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.”

**Related statute or rule:**

None.

**Plain language analysis:**

This proposed rule updates chs. SPS 305, 314, and 361 to 366 to require the periodic inspection and testing of fire and smoke dampers required under NFPA 1, NFPA 80, and NFPA 105 to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Summary of, and comparison with, existing or proposed federal regulation:**

None.

**Summary of public comments and feedback on the statement of scope and the Department's responses:**

The Department held a public comment period and conducted a public hearing on November 1, 2019. The Department did not receive written comments or testimony concerning the statement of scope.

**Comparison with rules in adjacent states:**

**Illinois:** Illinois rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Iowa:** Iowa rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Michigan:** Michigan rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Minnesota:** Minnesota rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Summary of factual data and analytical methodologies:**

Current rules require the inspection and testing of fire and smoke dampers to be performed by a qualified person with knowledge and understanding of the operating components of the type of assembly to be tested. The Department has determined that more specific requirements are needed to ensure qualified persons are conducting inspections and testing of fire and smoke dampers. The proposed rule will require the periodic inspection of fire and smoke dampers required under NFPA 1, NFPA 80, and NFPA 105 to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis document is attached.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator, Dan Hereth, may be contacted by calling (608) 267-2435.

**Agency contact person:**

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov). Comments must be received at or before the public hearing to be held at 9:00 a.m. on January 8, 2020, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. SPS 305.627 (1) is amended to read:

**SPS 305.627 (1) GENERAL.** No person may perform inspections of fire detection, prevention, and suppression devices being installed during the construction or alteration of, or the addition to, public buildings and places of employment for the purpose of administering and enforcing chs. SPS 361 to 366 and 375 to 379 unless the person holds a certification issued by the department as a certified fire detection, prevention, and suppression inspector or holds a certification as a commercial building inspector.

SECTION 2. SPS 314.001 (3) is created to read:

**SPS 314.001 (3) INSPECTION AND TESTING OF FIRE AND SMOKE DAMPERS.** The periodic inspection and testing of fire and smoke dampers required under NFPA 1, NFPA 80, and NFPA 105 shall be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

SECTION 3. SPS 361.03 (16) is created to read:

**SPS 361.03 (16) INSPECTION AND TESTING OF FIRE AND SMOKE DAMPERS.** The periodic inspection and testing of fire and smoke dampers required under NFPA 1, NFPA 80, and NFPA 105 shall be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

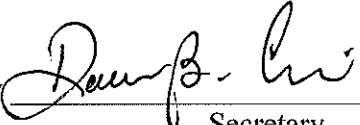
SECTION 4. **INITIAL APPLICABILITY.** This rule first applies to periodic inspections and testing of fire and smoke dampers conducted on the effective date of this rule.

SECTION 5. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the 13th month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (b), Stats.

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(END OF TEXT OF RULE)  
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This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated 2/7/2020

Agency   
Secretary  
Department of Safety and Professional Services

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> November 29, 2019
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> SPS 314 and 361	
<b>4. Subject</b> The inspection and testing of fire and smoke dampers	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b>
<b>7. Fiscal Effect of Implementing the Rule</b> <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (If checked, complete Attachment A)	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$0	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> Current rules require the inspection and testing of fire and smoke dampers to be performed by a qualified person with knowledge and understanding of the operating components of the type of assembly to be tested. The Department has determined that more specific requirements are needed to ensure qualified persons are conducting inspections and testing of fire and smoke dampers. The proposed rule will require the inspection of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> No local governmental units participated in the development of this EIA.	
<b>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</b> The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.	
<b>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b> The benefit to implementing the rule is greater assurance that qualified persons are conducting inspections and testing of fire and smoke dampers.	
<b>16. Long Range Implications of Implementing the Rule</b> The long range implication of implementing the rule is greater assurance that qualified persons are conducting inspections and testing of fire and smoke dampers.	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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17. Compare With Approaches Being Used by Federal Government

None

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

**Illinois:** Illinois rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Iowa:** Iowa rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Michigan:** Michigan rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

**Minnesota:** Minnesota rules do not require the inspection and testing of fire and smoke dampers to be conducted by a person with current fire life safety certification from a program accredited by the American National Standards Institute.

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19. Contact Name

Dale Kleven

20. Contact Phone Number

(608) 261-4472

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This document can be made available in alternate formats to individuals with disabilities upon request.



**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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