

443 Lafayette Road N.
St. Paul, Minnesota 55155
www.dli.mn.gov



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

(651) 284-5005
1-800-342-5354
TTY: (651) 297-4198

September 19, 2016

Legislative Reference Library
645 State Office Building
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Amendment to Rules Governing a Means of Egress Regulation Relating to Stairway Width in the International Residential Code, Minnesota Rules, part 1309.0311, subpart 2, Revisor's ID Number R-04358

Dear Librarian:

The Minnesota Department of Labor and Industry intends to adopt an amendment to rules governing a means of egress regulation relating to stairway width in the International Residential Code. We published a Notice of Intent to Adopt Rules Without a Public in the September 19, 2016 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-284-5867.

Yours very truly,

Colleen Clayton
Rules Coordinator

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Labor and Industry

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing a Means of Egress Regulation Relating to Stairway Width in the International Residential Code, Minnesota Rules, part 1309.0311, subpart 2; Revisor's ID Number R-04358

INTRODUCTION

This rulemaking will make permanent the correction of a drafting error that occurred during the recent adoption of the 2012 International Residential Code ("IRC") which inadvertently deleted the stairway width requirements found in 2012 IRC Section R311.7.1. The drafting error was corrected by an exempt temporary rulemaking that reinstated the 2012 IRC's stairway width requirements. See 39 *State Register* 999, 1003-1005 (Jan. 05, 2015) (*codified at* Minn. R. 1309.0311, subpt. 2 (2015)). However, that exempt rule is temporary in nature and expires on January 23, 2017. This rulemaking is needed to make the correction to that error permanent. The affected rule part is located in Minnesota Rules, part 1309.0311, subpart 2, which was originally intended to amend 2012 IRC Section R311.7.1 by merely adding scoping provisions to that code section for better clarity and uniform application.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Colleen Clayton at the Department of Labor and Industry, 443 Lafayette Road N, St. Paul, Minnesota 55155, phone 651-284-5867, and fax 651-284-5749.

STATUTORY AUTHORITY

The Department of Labor and Industry's statutory authority to adopt the rules is stated in *Minnesota Statutes*, sections 326B.02, subdivision 5; 326B.101; and 326B.106, subdivision 1(a).

Minnesota Statutes, section 326B.02, subdivision 5, authorizes, in part, the Commissioner of Labor and Industry to adopt, amend, suspend, and repeal rules relating to the commissioner's responsibilities under Chapter 326B, except for rules for which the rulemaking authority is expressly transferred to the Plumbing Board, the Board of Electricity, or the Board of High Pressure Piping.

Minnesota Statutes, section 326B.101 requires, in part, that the Commissioner of Labor and Industry administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs.

Minnesota Statutes, section 326B.106, subdivision 1(a), requires, in part, that the Commissioner of Labor and Industry shall by rule and in consultation with the Construction Codes

Advisory Council establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety, including design and construction standards regarding heat loss control, illumination, and climate control. That statutory provision also requires that the code include duties and responsibilities for code administration, including procedures for administrative action, penalties, and suspension and revocation of certification.

Under these statutes, the Commissioner has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Department of Labor and Industry's ("Department") response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The classes of affected persons who probably will be affected by the proposed rule include residential building contractors and builders, designers, certified building officials, materials manufacturers, fire service and emergency response personnel, homeowners, and the general public.

Those that will bear the costs of the proposed rule, if any, include residential building contractors and builders, and the homeowners to whom they will ultimately pass on those costs. However, as seen below, the Department does not anticipate any costs associated with the reinstatement of the 2012 IRC's stairway width requirements into the State Building Code.

Those that will likely benefit from the proposed rule include residential building contractors and builders, designers, certified building officials, materials manufacturers, fire service personnel, homeowners, and the general public.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

There are no probable costs to the Agency anticipated for this rulemaking because it simply makes permanent a temporary rule adopted through an exempt temporary rulemaking process. The temporary rule is currently in effect. The temporary rule corrects a drafting error made during the adoption of the 2012 International Residential Code. Moreover, the code requirement that was reinstated by the exempt rulemaking process and proposed in this permanent rulemaking existed previously in both the IRC and Minnesota rule for almost 30 years, but was inadvertently omitted in the last amendment to the existing rule. The exempt rulemaking process corrected that drafting error and reinstated the requirement as it existed previously in the rule without change, as is proposed in this permanent rulemaking procedure.

For similar reasons, the Department does not anticipate any probable costs to any other agency for the implementation and enforcement of this proposed rulemaking, nor is there any anticipated effect on state revenues as a result of the implementation and enforcement of the proposed rule.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

There are no less costly or intrusive methods for achieving the purpose of the proposed rule. The permanent adoption of this rule amendment will provide uniform application and enforcement of specific construction standards concerning stairway width. The uniform application and enforcement of this permanent rule will result in more predictable code application and enforcement, which will tend to lower costs by reducing the need for review by local and state boards and other entities responsible for code interpretation and review.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

Because the International Residential Code serves as the base document for the Minnesota Residential Code (Minnesota Rules Chapter 1309, *et. seq.*) and it is currently the only model residential building code that is generally accepted and in use in the United States, no alternative model code or other methods for achieving the purpose of the proposed rule were considered. Moreover, the purpose of the proposed rule is to correct a drafting error that is present in a rule part that has already been adopted under Chapter 14, the Minnesota Administrative Procedure Act, so no alternative methods were seriously considered by the Department.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

There are no probable costs of complying with the proposed rule for any affected parties anticipated for this rulemaking because it simply makes permanent a temporary rule adopted through an exempt temporary rulemaking process. The temporary rule is currently in effect. The temporary rule corrects a drafting error made during the adoption of the 2012 International Residential Code. Moreover, the minimum stairway width code requirement that was reinstated by the exempt rulemaking process and proposed in this permanent rulemaking existed previously in both the IRC and Minnesota rule for almost 30 years, but was inadvertently omitted in the last amendment to the existing rule. The exempt rulemaking process corrected that drafting error and reinstated the requirement as it existed previously in the rule without change, as is proposed in this permanent rulemaking procedure. The uniform application and enforcement of this permanent rule will result in more predictable code application and enforcement, which will tend to lower costs by reducing the need for review by local and state boards and other entities responsible for code interpretation and review.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The probable costs or consequences of not adopting the proposed rule include the lack of uniform application and enforcement of residential stairway width requirements in the State of Minnesota by building officials, plan reviewers, and other state and local authorities. Additionally, the failure to reinstate stairway width requirements into the Minnesota State Building Code may seriously and negatively affect public safety, health and welfare in that minimum stairway width requirements are necessary for the safe and orderly egress of individuals from residential dwellings, as well as the safe and unobstructed access to and from those dwellings by fire service and emergency response personnel.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

The Department is unaware of any federal regulations that specifically address residential construction or the subject of this rulemaking. However, to the extent that any federal accessibility requirements apply, the Department has promulgated the Minnesota Accessibility Code, Minnesota Rules, Chapter 1341, to incorporate those requirements.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.”

The Minnesota State Building Code is a single set of coordinated building construction regulations that apply throughout the state of Minnesota. There are no other building codes that can be used or enforced in this state. When the Department adopts the individual rules that make up the State Building Code, it works with other state agencies that may also have an effect on certain buildings to ensure that the requirements that are parallel or that cover the same building type, are not cumulative.

The Department also develops the Minnesota Accessibility Code so that it incorporates the federal accessibility requirements to the extent they are applicable. When certain accessibility features are not required in Minnesota, our accessibility experts inform code users that although something is not required by the Minnesota Code, it may still be required federally and must be complied with.

The adoption cycle for the Minnesota State Building Code generally occurs every six years so it reflects current changes that occur federally and with other state agencies. For example, the Department of Energy implements federal requirements for energy in construction by working through the international model code process. By adopting and incorporating international model codes into the Minnesota State Building Code by reference, the cumulative effect is greatly reduced or eliminated. Department staff also closely monitors any regulatory changes that occur federally and on a state level. The Department also has staff that monitors code changes being

proposed to the model building codes at the national level to reduce cumulative effect and to ensure that the Minnesota State Building Code will not conflict with other building code regulations.

There is no significant “cumulative effect” or impact of this proposed rulemaking with other federal and state regulations related to building requirements since the proposed rule merely makes permanent an existing temporary rule concerning residential stairway width requirements and reinstates existing requirements that are noncontroversial and have been in existence for years in the Minnesota State Building Code.

PERFORMANCE-BASED RULES

Minnesota Statutes, section 326B.106, subdivision 1, authorizes the Department to establish by rule a code of standards for construction. This statute requires the code to “conform insofar as practicable to model building codes generally accepted and in use throughout the United States.” At the same time, this statute mandates that “*to the extent possible*, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or materials.” *Id.* (emphasis added). The proposed rule is clearly prescriptive in nature. However, the Department believes that a specified minimum stairway width requirement in residential construction is necessary for the uniform application and enforcement of the code requirement and for the protection and safety of homeowners, guests, and emergency response personnel who need and expect safe and unobstructed access to and from differing floor levels of a residential dwelling. Therefore, the proposed rule is prescriptive, rather than performance based.

ADDITIONAL NOTICE

The Department’s Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an Order on Review of Additional Notice Plan issued by Administrative Law Judge James E. LaFave on August 16, 2016.

Our Notice Plan includes giving notice required by statute as well as giving notice to associations and trade groups not required by statute. We will mail or Email the Notice, which will contain an easily readable and understandable description of the nature and effect of the proposed rule, to everyone who has registered to be on the Department’s rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature as required by Minnesota Statutes, section 14.116. Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

The Department will mail the Notice to the following interested parties:

1. All state certified Building Officials involved in code administration;
2. All chapters of the Minnesota Association of Building Officials (“AMBO”);

3. Builders Association of Minnesota (“BAMN”);
4. Builders Association of the Twin Cities (“BATC”);
5. Minnesota State Fire Marshal Division;
6. Fire Marshals Association of Minnesota (“FMAM”);
7. Minnesota State Fire Chiefs Association (“MSFCA”);
8. Minnesota Professional Fire Fighters Association (“MPFFA”);
9. League of Minnesota Cities;
10. Association of Minnesota Counties;
11. Minnesota Manufactured Home Association (“MMHA”); and
12. American Institute of Architects- Minnesota (“AIA”).

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department consulted with the Commissioner of Minnesota Management and Budget (“MMB”) concerning the fiscal impact and benefits the proposed rules may have on units of local government. This was done on July 28, 2016, by providing MMB with copies of the Governor’s Office Proposed Rule and SONAR Form, the proposed rules, and the near-final SONAR. On August 16, 2016, the Department received a memorandum dated August 11, 2016, from MMB Executive Budget Officer Marianne Conboy which provided general comments and concluded that:

“...the proposed rule amendments will not impose any significant cost to local government.”

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether these proposed rules require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. Pursuant to Minnesota Statutes, section 14.128, the Department has determined that a local government will not be required to adopt or amend an ordinance or other regulation to comply with these proposed rules. The State Building Code is the standard that applies statewide. Minnesota Statutes, section 326B.121, subdivision 1, mandates compliance with the State Building Code whether or not a local government adopts or amends an ordinance. As a result, an ordinance or other regulation is not required for compliance. If a city wishes that its ordinances accurately reflect legal requirements in a situation in which the State Building Code has superseded the ordinances, then the city may want to amend or update its ordinances, but it is not necessary.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city because the proposed rules merely make permanent a minimum stairway width requirement that has been, and continues to be (albeit temporarily), in effect for over 30 years. Additionally, the proposed rules do not require any construction to occur within the first year after the rules take effect. Any small business or city contemplating new residential construction or remodeling may decide whether or not to undertake the construction or remodeling project and when that construction or remodeling will occur. Because no new construction or remodeling is required by the proposed rules within the first year after the rules take effect and because the proposed rules merely make permanent a minimum residential stairway width requirement that has been, and continues to be, in effect for years, the Department has determined that any costs for a small business or city to comply with the proposed rules will not exceed \$25,000 in the first year after the rules take effect

LIST OF WITNESSES

If these proposed rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Construction Codes and Licensing Division staff will testify as to the need and reasonableness of the proposed rules, if necessary.

RULE-BY-RULE ANALYSIS

1309.0311 Section R311, MEANS OF EGRESS

Subpart 2. This rule subpart modifies 2012 IRC, Section R311, Means of egress. Minnesota Rule, part 1309.0311, Means of Egress, adopts Section R311 of the 2012 IRC, with amendments, and addresses building and design requirements related to egress routes from a residential dwelling, including stairways. Subsection R311.7 of the 2012 IRC addresses egress stairways in general and R311.7.1 specifically addresses stairway width requirements.

Minnesota has adopted the IRC's general stairway construction and design standards, including stairway width requirements, for the past 30 years, but the Department noticed some confusion in the field over which stairways the regulations applied to since there were no scoping provisions in the model code. Therefore, the Department amended Subsection R311.7 of the 2012 IRC to add a scoping provision that clarified which type of stairways the requirements applied to. *See 39 State Register 91* (July 28, 2014). Unfortunately, the new scoping provision's section number was assigned by the Revisor to Subsection R311.7.1 of the 2012 IRC in the rulemaking, which inadvertently resulted in the deletion of the 2012 IRC subsection addressing stairway width requirements in Minnesota. However, prior to the effective date of that rule part, the Department

promulgated and adopted an exempt temporary rule which corrected that drafting error and reinstated the IRC's stairway width requirement. *See 39 State Register 999, 1003-1005 (Jan. 05, 2015) (codified at Minn. R. 1309.0311, subpt. 2 (2015))*. Pursuant to Minnesota Statutes, section 14.388, subdivision 1, that good cause exempt rule is temporary in nature and expires on January 23, 2017. Accordingly, the Department is proposing to adopt the instant rule amending part 1309.0311, subpt. 2, to make that temporary exempt rule amendment permanent.¹

The failure to provide for minimum stairway width requirements in the Minnesota State Building Code will seriously and negatively affect public safety, health and welfare in that minimum stairway width requirements are necessary for the safe, uniform and orderly egress of individuals from dwellings, as well as the safe and unobstructed egress to and from dwellings by fire service and emergency response personnel. Therefore, it is necessary and reasonable to provide for minimum stairway width requirements in this proposed rulemaking, including an effective date that provides for continuing, uninterrupted and consistent residential building standards in the State of Minnesota.

EFFECTIVE DATE

In accordance with Minnesota Statutes, section 326B.13, subdivision 8, the Commissioner has determined that it is necessary to establish January 24, 2017, as the effective date for this proposed amendment to the State Building Code. As noted above, the existing good cause exempt rule addressing stairway width requirements is temporary in nature and expires on January 23, 2017. The Commissioner finds and has determined that an effective date earlier than 270 days for this proposed code amendment is needed for continuity of coverage and necessary for protection of public health and safety.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

8/18/16
Date

Kenneth B. Peterson
Kenneth B. Peterson
Commissioner, Department of Labor and Industry

¹ It should also be noted that the erroneous reference citation contained in 2012 IRC Section R311.7.1's width exception for spiral stairways was later corrected by the International Code Council's errata process and now correctly cites to "Section R311.7.10.1" of the 2012 edition. That typographical correction is also provided for in this proposed rule at the end of subpart 2.