



July 25, 2019

Legislative Reference Library
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Re: In the Matter of the Proposed Rules of the Department of Labor and Industry Governing the Minnesota Accessibility Code, Minnesota Rules, Chapter 1341; Revisor's ID Number R-04514

Dear Librarian:

The Minnesota Department of Labor and Industry ("Department") intends to adopt amendments to rules governing the Minnesota Accessibility Code, Minnesota Rules, chapter 1341. The Department plans to publish a Dual Notice in the July 29, 2019, *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 Dual Notice.

If you have questions, please email me at amanda.spuckler@state.mn.us or call me at (651) 284-5361.

Very truly yours,



Amanda Spuckler
Rules Specialist
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Attachment: Statement of Need and Reasonableness

Minnesota Department of Labor and Industry

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing the Minnesota Accessibility Code, Minnesota Rules, Chapter 1341; Revisor's ID Number R-04514

INTRODUCTION

The Commissioner (“Commissioner”) of the Department of Labor and Industry (“Department”) proposes to amend rules governing accessibility for buildings and facilities of the Minnesota State Building Code, Minnesota Rules, Chapter 1341.

The Minnesota State Building Code consists of twenty-two separate chapters of Minnesota Rules.¹ Chapter 1341 incorporates by reference the necessary accessibility provisions found in the International Code Council (“ICC”) model codes and standards, with amendments, for use in Minnesota. This rule chapter provides direction as to which building elements in newly designed and constructed buildings or existing buildings undergoing renovation are required to be accessible, the minimum number of required accessible elements, and the technical design of those elements to make commercial and public buildings readily accessible to and usable by individuals with disabilities.

The Americans with Disabilities Act of 1990 (“ADA”) is a federal civil rights law that prohibits discrimination on the basis of a disability. As a part of that law, the U.S. Department of Justice promulgates regulatory requirements that contain a set of scoping and design criteria for the built environment to ensure that buildings and facilities do not construct barriers to accessibility that would adversely affect persons with disabilities. One of the first federal documents intended to be used as a model to help states incorporate accessibility requirements for design and construction was the Americans with Disabilities Act Accessibility Guidelines (“ADAAG”). In 2010, the ADAAG were updated and incorporated into the “2010 ADA Standards for Accessible Design.”² These federal standards set minimum requirements, both scoping and technical, for newly designed and constructed or altered governmental buildings, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities. The model code provisions and standards proposed for incorporation into this rule, including any amendments thereto, meet or exceed that federal standard.

The proposed rules incorporate by reference, with amendments, chapter 11 of the 2018 edition of the International Building Code (“IBC”) and section 305 of the 2018 edition of the International Existing Building Code (“IEBC”). The 2009 edition of the International Code Council/American National Standards Institute’s (“ICC/ANSI”) A117.1 Standard, Accessible

¹ A complete list of the Chapters making up the Minnesota State Building Code can be found at Minnesota Rules, part 1300.0050 (2016).

² A copy of the 2010 ADA Standards for Accessible Design can be viewed at: [2010 ADA Standards for Accessible Design](#)

and Usable Buildings and Facilities, is incorporated by reference in the existing rule and remains the controlling standard. *See* Minnesota Rules, part 1341.0010, Referenced Standard (2015).³

In consultation with the Construction Codes Advisory Council (“CCAC”), the Department of Labor and Industry (“Department”) utilized a Technical Advisory Group (“TAG”) committee to review existing rule Chapter 1341 and the 2018 ICC model building codes and to propose reasonable and needed changes to the accessibility provisions of the State Building Code, contained in that rule chapter. The proposed amendments in this rulemaking incorporate changes proposed by Chapter 1341 TAG members to the accessibility provisions in the 2018 ICC model codes that affect this chapter and other chapters of the Minnesota State Building Code.

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 Amanda Spuckler at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155, phone: 651-284-5006, and email: amanda.spuckler@state.mn.us.

STATUTORY AUTHORITY

The Department’s statutory authority to adopt the rules is stated in the following Minnesota Statutes:

326B.02, Subdivision 5. General rulemaking authority. The commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend, and repeal rules relating to the commissioner's responsibilities under this chapter, 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 Systems.

326B.101 Policy and purpose. The State Building Code governs the construction, reconstruction, alteration, repair, and use of buildings and other structures to which the code is applicable. The commissioner shall 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. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

326B.106, Subdivision 1. Adoption of code. Subject to sections 326B.101 to 326B.194, the commissioner shall by rule and in consultation with the Construction Codes Advisory Council establish a code of standards for the construction, reconstruction, alteration, and

³ For purposes of this SONAR, the ICC/ANSI A117.1-2009 design standard is referred to throughout as the “ICC A117.1 standard.” A copy of the ICC A117.1-2009 standard can be viewed at: https://codes.iccsafe.org/content/ICCA117_12009?site_type=public

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. The code must also include duties and responsibilities for code administration, including procedures for administrative action, penalties, and suspension and revocation of certification. The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States, including a code for building conservation. In the preparation of the code, consideration must be given to the existing statewide specialty codes presently in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference. The code must be based on the application of scientific principles, approved tests, and professional judgment. 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. To that end the code must encourage the use of new methods and new materials. Except as otherwise provided in sections 326B.101 to 326B.194, the commissioner shall administer and enforce the provisions of those sections.

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

CONSULTATION WITH THE CONSTRUCTION CODES ADVISORY COUNCIL

Minnesota Statutes, section 326B.106, subdivision 1(a), requires the Commissioner to consult with the Construction Codes Advisory Council (“CCAC”) in connection with the adoption of rules, codes, and standards relating to building construction. Minnesota Statutes, section 326B.07, subdivision 1, sets forth the requirements for membership of the CCAC.⁴ Minnesota Statutes, section 326B.07, subdivision 2, directs the CCAC to review code changes and provide recommendations to the Commissioner on proposed changes to the rule chapters that comprise the Minnesota State Building Code.

As required by statute, the Department consulted with the CCAC in connection with these proposed rules. In consultation with the CCAC, the Department utilized a Technical Advisory Group (“TAG”) to review the existing rule chapter and the 2018 ICC model codes and to comment and propose reasonable and needed changes to Chapter 1341. The Chapter 1341 TAG committee members were appointed by the CCAC and consisted of representatives from the Minnesota Council on Disability, the Building Owners/Management Association, the Association of Minnesota Building Officials, the American Institute of Architects/Minnesota, and department staff.⁵ Upon completion of their review, a report detailing their evaluation of the 2018 ICC model codes and recommended changes to existing Chapter 1341 was submitted to the CCAC and reviewed by that council at a public meeting on June 21, 2018.⁶ The council’s comments and recommendations concerning changes to Chapter 1341 were then forwarded to

⁴ A complete list of the members of the Construction Codes Advisory Council is attached hereto as Exhibit A.

⁵ A complete list of the Chapter 1341 TAG participants is attached hereto as Exhibit B.

⁶ A Report detailing all TAG reviews of the 2018 ICC model codes, along with comments from the public and the CCAC, may be found at: [2018 International Model Codes Review](#).

the Commissioner for her consideration in proposing the underlying rule amendments in this rulemaking.

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's 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”

Persons who will probably be affected by these rules include municipal building inspection personnel, building contractors, architects, engineers, fire inspection personnel, building owners and managers, and facility users, including the general public.

Persons who will probably bear the costs of these rules include primarily building owners and managers and businesses. If building owners and managers or businesses must pay for the construction costs, those costs will likely be passed on to the facility user or the consumer.

Persons who will benefit from these rules include the general public, both those with and without disabilities, and building owners and managers and businesses who want to ensure access to and usability of their facilities.

“(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”

The probable costs to the agency and to any other agency for the implementation and enforcement of the proposed rule will likely be the costs for new editions of the codes and standards incorporated into this rule and for the amendments. Costs for training agency personnel about changes to the rule will be negligible because these same personnel currently receive training on a regular basis for continuing education and other purposes. There is no anticipated effect on state revenue.

“(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 this proposed rule. The adoption of this proposed rule will provide uniform application of accessibility requirements that meet or exceed those found in the federal law and accepted national model codes. The uniform application of these requirements through the Minnesota State Building Code will ensure people with disabilities better access to the built environment while providing predictable and consistent code application for the construction industry, thereby tending to reduce construction costs.

“(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”

In addition to the existing incorporation by reference of the 2009 edition of the ICC A117.1 standard, the Department determined that adopting chapter 11 of the 2018 IBC and section 305 of the 2018 IEBC will provide accessibility requirements that meet or exceed the most current federal ADA regulations. The 2018 IBC, 2018 IEBC, and the ICC A117.1 standard incorporate all of the regulations contained in the federal 2010 ADA Standards for Accessible Design. The ADA Standards for Accessible Design are updated less frequently than the IBC, IEBC, and the ICC A117.1 standard, making the ADA Standards less current than the IBC, IEBC, and the ICC A117.1. For these reasons, the Department chose not to incorporate the 2010 ADA Standards for Accessible Design into the rule in favor of chapter 11 of the IBC, section 305 of the IEBC, and the ICC A117.1 standard to provide the most current accessibility requirements for Minnesota.

The ICC did publish a 2017 edition of the ICC A117.1 standard. However, the Department is not adopting the 2017 edition of the ICC A117.1 standard as a part of this rulemaking due to its possible conflicts and a lack of consistency with the 2018 editions of the IBC and IEBC. The 2018 editions of the IBC and IEBC reference and base their requirements on the 2009 edition of the ICC A117.1. The 2017 edition of the ICC A117.1 has significant changes from the 2009 edition that may conflict with provisions of the 2018 editions of the IBC and IEBC. It is necessary that the technical design requirements for accessible building elements in the ICC A117.1 be consistent with the model building codes proposed for adoption. Therefore, the Department has decided not to incorporate by reference the entirety of the 2017 edition of the ICC A117.1, and instead is modifying the 2009 edition to include individual provisions of the 2017 edition of the ICC A117.1 standard that are necessary to improve accessibility of structures and facilities in the state of Minnesota.

“(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”

The proposed rules do not require that any accessibility changes be made to existing buildings. The proposed rules only affect accessibility requirements for new construction or remodeling of an existing building subject to the IBC or IEBC. Although it is difficult to quantify costs, the Department anticipates that for most types of construction, the global costs associated with this rule will be minimal compared to the rule it is replacing. While some accessibility requirements may be considered more restrictive than current requirements and may increase costs, others are less restrictive than current requirements under Chapter 1341 and may decrease costs.

The Department has identified requirements of the proposed rules that may increase costs for new construction of Group I-2 nursing homes licensed by the state. The 2010 ADA Standards for Accessible Design mandate that at least 50% of resident sleeping units in nursing homes be

accessible.⁷ Section 1107.5.2.1 of the 2018 IBC also requires that at least 50% of newly built resident sleeping units in nursing homes be accessible. However, existing Minnesota Rules, part 1341.0011, subpart 6, subitem E (2015), only requires ten percent of resident sleeping units in nursing homes to be accessible. To remedy this conflict between the existing rule part, the 2018 IBC, and the federal regulations, the proposed rule adopts the 2018 IBC's 50% accessibility requirement, which brings the existing Minnesota Accessibility Code into conformity with both the 2018 IBC and federal ADA law.

The cost to provide a resident room with accessible features is minimal. However, if a toilet room is provided in the accessible resident room, then the toilet room must be accessible as well. An accessible toilet room is twenty square feet larger than a toilet room without accessible features to allow for wheelchair maneuverability. The additional square footage required for an accessible toilet room increases the cost of construction by approximately \$8,000 per an accessible toilet room.⁸ As our elderly and disabled population increases, the Minnesota Department of Health and the healthcare industry have identified a need for more accessible resident rooms in nursing homes. Moreover, designers and the healthcare industry have generally been following the 50% accessible sleeping unit regulatory requirement for nursing homes under federal ADA standards for years despite the lower minimum standard that currently exists under Minnesota's Accessibility Code. Accordingly, the proposed rule amendment will likely have little, if any, impact on businesses that currently build and manage ADA compliant nursing homes in the state of Minnesota.

The Department also identified a modest cost increase for new buildings and renovation of existing buildings to comply with new signage requirements. Building elements, such as elevators and toilet rooms that are not accessible are proposed to have signage directing building occupants to the accessible element. These signs may require customization and can cost approximately \$50 to \$100, depending on the specific type of sign material utilized and the overall number of signs required. Additionally, the proposed rules require recreational facilities to provide signage indicating the location of accessible lockers. The cost of these signs is approximately \$10 to \$20 and will likely be borne by building owners and facility managers.

“(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 falling back on an accessibility code with older requirements which may result in equipment and construction processes that are less efficient and less cost effective. The costs for less effective or efficient equipment or practices will likely be borne by building owners. Incorporating newer accessibility requirements permits the incorporation of newer accessibility methods or

⁷ The 2010 ADA Standards for Accessible Design for public accommodations and commercial facilities include both the Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADAAG regulations at 36 CFR part 1191, appendices B and D. The 50% accessibility scoping requirement for resident sleeping units in nursing homes and other long-term care facilities is found at Section 223.3 of the 2004 ADAAG.

⁸ The \$8,000 figure was arrived at by the 1341 Technical Advisory Group's design professional utilizing an average 2018 nursing home new construction benchmark of \$250 per square foot and an allowance of up to \$3000 for floor, ceiling and wall finishing, ADA compliant fixtures, and grab bar sets.

technologies that are more efficient and cost-effective. Another possible consequence of not adopting the proposed rule is that the accessibility requirements in Minnesota will not be as current as the 2018 IBC and will fall below the minimum standards required by federal regulations under the ADA.

“(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”

While not a building code, the federal 2010 ADA Standards for Accessible Design provide design criteria for the construction and alteration of buildings and facilities to make them ADA compliant. The 2010 Standards set minimum requirements- both scoping and technical- for newly designed and constructed or altered state and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities. The code and standards incorporated into the proposed rulemaking generally corresponds with the federal 2010 ADA Standards for Accessible Design. However, it is not mandated that state accessibility code coverage be identical to or consistent with the federal standards in every respect. As stated in Section 103 (Equivalent Facilitation) of the 2010 ADA Standards for Accessible Design: “Nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed, provided they result in substantially equivalent or greater accessibility and usability.”

The proposed rule nevertheless meets or exceeds the minimum federal standards by and through incorporation and amendment of Chapter 11 of the IBC, Section 305 of the IEBC, and the ICC/ANSI A117.1-2009 standard.

Any differences between federal regulations and the proposed rule are more thoroughly discussed in the Rule-by-Rule Analysis section that follows. Each difference between the federal regulations and the proposed rule are specifically highlighted below and includes the reason why the proposed rule differs, as well as an analysis of the rule’s impact on projected building costs.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

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 to identify other regulations 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.

For example, portions of Minnesota Rules, chapter 1305, Adoption of the International Building Code, regulate the planning and construction of nursing homes and care facilities in Minnesota. The Department utilized a Technical Advisory Group to review the 2018 IBC,

including the Chapter 11 accessibility requirements. The Technical Advisory Group members included technical expertise from other state agencies' personnel to ensure that the proposed rule would coordinate with any other state regulations that may be affected by the rule.

The adoption cycle for and the Minnesota State Building Code occurs every six years so the rules are current and reflect the most recent changes that occur federally and with other state agencies.⁹ By adopting and incorporating international model codes into the Minnesota State Building Code by reference, the cumulative effect and duplication of building code regulations are also greatly reduced or eliminated. Department staff monitor any regulatory changes that occur federally and on a state level. The Department also has staff that monitor code changes being proposed to the model building codes at the national level to ensure that the Minnesota State Building Code will not conflict with or duplicate other building requirements.

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.” The Minnesota State Building Code establishes minimum regulations for building systems using prescriptive and performance-based provisions with emphasis on performance.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a June 26, 2019 letter by Administrative Law Judge LauraSue Schlatter.

Our Notice Plan also includes giving notice required by statute. We will mail or email the Notice of Intent to Adopt 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 pursuant to Minnesota Statutes, section 14.116. We will also send by United States mail the Notice of Intent to Adopt to the following interested parties:

- a. Minnesota State Council on Disability
- b. All municipal code officials and others involved in code administration. This list includes all municipal building officials responsible for administration of the Minnesota State Building Code.
- c. Minnesota State Fire Chiefs Association
- d. Minnesota State Fire Marshal Division
- e. Minnesota Mechanical Contractors' Association
- f. Builders' Association of Minnesota
- g. Builders' Association of the Twin Cities

⁹ See [Minn. Laws 2015 c. 54, art. 1, s. 6](#). This law became effective August 1, 2015 and applies to all model code adoptions beginning with the 2018 model building codes.

- h. Association of Minnesota Counties
- i. American Institute of Architects Minnesota
- j. Minnesota Multi-Housing Association
- k. League of Minnesota Cities
- l. Building Owners and Managers of Minneapolis and St. Paul
- m. Minnesota Society of Professional Engineers
- n. Minnesota Council of Churches
- o. Jewish Community Relations Council Minnesota & the Dakotas
- p. Islamic Center of Minnesota
- q. Minnesota Catholic Conference
- r. Care Providers of Minnesota
- s. LeadingAge Minnesota

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations pursuant to Minnesota Statutes, section 14.111.

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 May 16, 2019, by providing MMB with copies of the Governor’s Office Proposed Rule and SONAR Form, the proposed rules, and the near-final SONAR for review and comment. On May 31, 2019, the Department received a memorandum dated that same day from MMB Executive Budget Officer Laurena Schlottach-Ratliff which provided comments and conclusions concerning local government impact consistent with those noted by the Department in the cost impact sections of the Regulatory Analysis section above and the Department’s determination of small city and small business compliance costs provided below.¹⁰

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency 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 Minnesota 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 more accurately reflect legal requirements in a situation in which the Minnesota State Building Code has superseded the ordinances, then the city may want to amend or update its ordinances.

¹⁰ A copy of MMB’s local government impact analysis is attached hereto as Exhibit C.

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.¹¹ The costs of construction are subject to many variables, including the current construction economy, material costs, and local labor costs. The number of variables and the fact that the proposed rules will provide for both cost savings and cost expenditures, makes it unlikely that any specific set of requirements that apply to a specific building on a specific site will increase the cost for a small city or small business by more than \$25,000. However, the Department has determined that the cost of complying with the proposed rules may exceed \$25,000 for a small business or a small city that chooses to newly build or renovate an existing nursing home facility during the first year after the proposed rules take effect.

As noted in the Department's response to paragraph number (5) of the Regulatory Analysis section discussed above, the proposed amendment to part 1341.0011, subpart 6, subitem E, may increase costs of construction for new or remodeled nursing homes by requiring additional accessible resident sleeping rooms. However, most nursing homes in Minnesota are not owned or operated by small businesses or small cities and are already designed as fully ADA compliant under federal law, including the 50% minimum requirement for accessible sleeping units. The average nursing home in Minnesota is privately owned and has over eighty resident sleeping rooms and over fifty employees. Additionally, whether the increase will exceed \$25,000 during the first year after the proposed rule takes effect will depend upon how many resident sleeping rooms are being added to a newly built or remodeled nursing home facility during that year.

Finally, as noted in the Department's response to paragraph number (5) of the Regulatory Analysis section discussed above, the requirement that 50% of all resident sleeping rooms in newly built or remodeled Group I-2 nursing homes be accessible is a federal regulatory mandate under the ADA. While Minnesota Statutes, section 14.127, subdivision 3, generally allows a small business or small city to claim a temporary exemption from newly adopted rules that have a possible compliance cost in excess of \$25,000 during the first year after the rule takes effect, subdivision 4 of that same statute lists exceptions and clarifies that subdivision 3 does not apply to rule amendments that are being proposed pursuant to a specific federal statutory or regulatory mandate. *See* Minnesota Statutes, section 14.127, subdivision 4(b) (2018). Since the proposed 50% accessibility requirement for resident sleeping rooms in a newly constructed or renovated nursing home facility is a federal regulatory requirement under the 2010 ADA Standards for Accessible Design, the temporary exemption contained in section 14.127 does not apply.

¹¹ For purposes of Minnesota Statutes, section 14.127, "Small Businesses" are defined as any one business that has less than 50 full-time employees" and "Small Cities" are defined as "any one statutory or home rule charter city that has less than 10 full-time employees." *See* Minnesota Statutes, section 14.127, subdivision 1 (2018).

LIST OF WITNESSES

If these 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. Department of Labor and Industry staff, if necessary; and
2. Members of the Accessibility Technical Advisory Group, if necessary.

RULE-BY-RULE ANALYSIS

GENERAL TERM USAGE.

Throughout the Rule-by-Rule Analysis section of this SONAR, specific terms are used to help explain accessibility requirements based on an occupancy type, a unit type, or some other unique occupancy. These terms are specifically defined within the 2018 International Building Code or the ICC A117.1-2009 standard, but are more fully described in this “GENERAL TERM USAGE” section, below.

Accessible. “Accessible” is defined in ICC A117.1, section 106.5 (2009), and means that a person with a vision disability, hearing disability, aging disability, a disability of coordination, or any other disability that significantly reduces mobility, flexibility, coordination, or perceptiveness can access or use a space, area, device, or piece of equipment. In that regard, a “unit” refers to a room or a space intended for human occupancy and an “occupancy” means the use or intended use of a building or part of a building that is rented, leased, or otherwise used or occupied by people.

Dwelling unit. A “dwelling unit” is defined in ICC A117.1, section 106.5 (2009), and means a single, complete, and independent room or space where people reside, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Sleeping unit. A “sleeping unit” is defined in ICC A117.1, section 106.5 (2009), and means a room or space independent of a dwelling unit where people sleep.

Accessible unit. An “Accessible unit” is defined in Section 202 of the 2018 IBC and means a unit that provides the highest level of accessibility. This type of accessibility is generally required for transient facilities, which have frequent turnover, and the users have no ability to modify the unit.

Type A unit. A “Type A unit” is defined in Section 202 of the 2018 IBC and only applies to apartments, monasteries, and convents. These units provide a level of accessibility that is slightly less than that of an Accessible unit. Accommodations must be made in Type A units to provide grab bars or to remove cabinets under sinks.

Type B unit. A “Type B unit” is defined in Section 202 of the 2018 IBC and refers to a unit that provides the lowest level of accessibility. The accessibility level in a Type B unit is consistent with the requirements found in the Federal Fair Housing Act. These units must

provide an accessible route throughout the unit and clear floor spaces next to bathroom fixtures and kitchen appliances to accommodate a person with a disability.

Ambulatory toilet compartment. An “ambulatory toilet compartment” means a toilet compartment that is intended for people who are ambulatory but need assistance by using grab bars to use the toilet or fixture. The term is further described and illustrated in section 604.10 of the ICC A117.1-2009 standard. The compartment must be three feet wide and must provide grab bars on each side of the toilet fixture.

Occupancy Groups.

Occupancy Classification and Use. Occupancy classification is the formal designation of the primary purpose of a building, structure or portion thereof. *See generally* Chapter 3 of the 2018 International Building Code.

Group A occupancies (A-1, A-2, A-3, A-4, and A-5). Generally, Group A occupancies are places where people assemble in small or large groups. Examples of Group A occupancies would include indoor symphony or concert halls, night clubs, restaurants, amusement arcades, places of worship, bowling alleys, gymnasiums, museums, outdoor amusement park structures, outdoor grandstands, and outdoor stadiums. Group A occupancies are more fully described in Chapter 3, section 303 of the 2018 International Building Code.

Group I occupancies (I-1, I-2, I-3, and I-4). Generally, Group I occupancies are facilities or buildings that provide care services for people, long-term detention for people, or serve as a long-term residence for persons that receive custodial care from persons other than parents or guardians. Examples of Group I occupancies would include assisted living facilities, group homes, rehabilitation facilities, hospitals, nursing homes, detoxification facilities, prisons, reformatories, and detention centers. Group I occupancies are more fully described in Chapter 3, section 308, of the 2018 International Building Code.

Group R occupancies (R-1, R-2, R-3 and R-4). Group R occupancies are typically places that people board for short or long periods of time, family dwellings, adult and child care facilities, congregate living facilities, and residential care or assisted living facilities. Examples of Group R occupancies include boarding houses, hotels, motels, apartment houses, fraternities, sororities, monasteries, one and two family dwellings, short term (less than 24 hours) adult care facilities, smaller short term (less than 24 hours) child day care facilities, congregate living facilities (16 or fewer persons), and residential care/assisted living facilities (5-16 persons). Group R occupancies are more fully described in Chapter 3, section 310, of the 2018 International Building Code.

1341.0005 INCORPORATION OF THE INTERNATIONAL BUILDING CODE AND INTERNATIONAL EXISTING BUILDING CODE BY REFERENCE.

The heading of this rule part is amended because section 305 of the International Existing Building Code (“IEBC”) is being incorporated by reference in addition to chapter 11 of the International Building Code (“IBC”). The 2018 edition of the IEBC was revised to include a

section specifically addressing accessibility requirements for existing buildings undergoing alteration, change of occupancy, or addition.

This rule part is modified by revising the language to properly incorporate by reference chapter 11 of the 2018 IBC. The changes to the language incorporating by reference the 2018 IBC are necessary to ensure that the proper edition of the model code is incorporated and that the publisher's copyright information is included.

Section 305 of the 2018 edition of the IEBC is also being incorporated by reference and the publisher's copyright information added to this subpart. The 2018 edition of the IEBC was revised and reformatted to address accessibility requirements in section 305. The accessibility requirements for existing buildings in that section are consistent with the accessibility requirements located in existing Minnesota Rules, part 1341.0011, subparts 11, 12, and 13. Existing subparts 11, 12, and 13 are being repealed because they are no longer necessary.

1341.0011 IBC CHAPTER 11.

Subpart 1. IBC Section 1101.2, Equity. The existing language concerning equivalent elements from subpart 1, subitem 1101.3 Equity, is carried forward from the existing rule subpart without change, but the subitem is renumbered to 1101.2 because the 2018 IBC was reformatted by deleting subsection 1101.2, Design, and creating a new section 1102 which addresses design compliance.

Subpart 1a. IBC Section 1101.3, Calculation of percentages. The existing language concerning calculation of ratios and percentages from subpart 1a is carried forward without change, but the subitem is renumbered to 1101.3 because the 2018 IBC was reformatted by deleting subsection 1101.2, Design, and creating a new section 1102 which addresses design compliance.

Subpart 2. IBC Section 1102, Definitions [REPEAL]. Existing subpart 2 is being repealed because the 2018 IBC was reformatted to provide for all definitions throughout in Chapter 2, section 202. To avoid duplicity and confusion while promoting uniformity, subpart 2 is repealed.

Subpart 2a. IBC Section 1102.2, Terms not Defined [REPEAL]. Existing subpart 2a is being repealed because the 2018 IBC was reformatted to provide for all definitions, including guidance when terms are not defined, in Chapter 2, section 202. To avoid duplicity and confusion while promoting uniformity, subpart 2a is repealed.

Subpart 3. IBC Section 1103, Scoping requirements.

A. 1101.2.1 Specific requirements. This subitem is modified by replacing the reference to section "1113" with section "1111" because section 1113 contains accessibility requirements for existing buildings and is being deleted. This rule part is being amended to modify the accessibility provisions for new buildings in the IBC. A new rule part, 1341.0030, is being added to modify the

accessibility provisions of the IEBC that pertain to existing buildings. It is reasonable to modify this subpart to specify the correct sections addressing accessibility requirements for new construction.

B. 1103.2.8 Areas in places of religious worship (new subitem). The content of existing subitem B is deleted because of renumbering and reformatting of the 2018 IBC and 2018 IEBC. The language of existing subitem B concerning existing buildings is relocated to new subpart 3a.

The language of subitem B is amended to delete section 1103.2.8 of the 2018 IBC to carry forward the existing accessibility requirements for new places of religious worship. Section 1103.2.8 of the 2018 IBC exempts from accessibility requirements areas in places of religious worship that are less than 300 square feet in area, located seven inches or more above or below the finished floor, and “used primarily for the performance of religious ceremonies.” The members of the 1341 Technical Advisory Group recommended deleting section 1103.2.8’s exception because application of this provision could prevent or hinder a person with a disability from accessing raised or lowered areas that other members of the congregation and the public have to access. In some places of religious worship, the congregation and the public use the raised or lowered areas to perform religious ceremonies or merely to address those present, including providing eulogies for the deceased, fund raising encouragement, or general announcements and speeches. Persons with a disability attempting to access these areas could suffer an injury due to the lack accessible features or be completely dissuaded from addressing the congregation at all. It is necessary and reasonable to carry forward the existing accessibility requirements for new places of religious worship for the safety and inclusion of everyone who accesses raised or lowered areas used within places of religious worship.¹²

Finally, it is important to note that raised or lowered areas used *exclusively* by members of the clergy and other employees in places of religious worship (“Employee Work Areas”) are still not required to be fully accessible under the 2010 ADA Standards for Accessible Design, the 2018 IBC, and Minnesota law. Section 1103.2.2 of the 2018 IBC continues to exempt from accessibility requirements employee work areas that are less than 300 square feet in area and located seven inches or more above or below the finished floor. The members of the 1341 Technical Advisory Group concluded that the continuing exemption provided for in 2018 IBC section 1103.2.2, Employee Work Areas, is sufficient to exempt from full accessibility requirements areas used only by employees and not by the general congregation or the public. The proposed deletion of the exception contained in section 1103.2.8 is reasonable given that raised or lowered areas used by the congregation or the public will continue to be fully accessible to all while employee work areas used only by clergy and other employees will continue to remain exempt from full accessibility requirements.¹³

¹² The 1341 Technical Advisory Group was also troubled by 2018 IBC section 1103.2.8’s use of the phrase “used primarily for the performance of religious ceremonies.” Not only is the use of the term “religious ceremonies” in this phrase undefined and subject to various interpretations, the term “used primarily for” is also vague and may be interpreted overly broadly to otherwise exempt from accessibility requirements raised and lowered areas in places of worship used routinely by both clergy and members of the congregation or public.

¹³ While generally exempt from accessibility requirements, the “Employee Work Area” exemption contained in both the 2010 ADA Standards for Accessible Design and 2018 IBC section 1103.2.2 still require employee work areas to comply with other ADA regulations and select chapters of the IBC regarding fire protection, means of egress, and

D. 1103.2.15 Recreational facilities (re-lettered). Existing subitem D is deleted because reformatting of the 2018 IBC has relocated accessibility requirements for live/work units to section 1107.6.2.1. Existing subitem E is re-lettered to subitem D and is modified by renumbering the section reference numbers due to numbering changes in the 2018 IBC. The language is changed to clarify this section is added to the IBC.

Subpart 3a. IBC Section 1103, Scoping Requirements (new subpart).

Section 1103.3 Existing buildings. This subpart is added to direct the code users to section 305 of the IEBC, as amended by proposed rule part 1341.0030, for accessibility requirements for existing buildings. The renovation of existing buildings must include accessible elements; however, accessibility requirements for existing buildings are not addressed in the 2018 edition of the IBC. Therefore, the proposed subpart directs code users to the IEBC for the accessibility requirements for existing buildings. It is reasonable to provide code users with a reference to the accessibility requirements for existing buildings.

Subpart 4. IBC Section 1104, Accessible route.

A. Section 1104.4, Multilevel buildings and facilities (re-lettered). Existing subitem A is deleted because this exception was deleted in the 2018 edition of the IBC. Therefore, the existing subitem is no longer necessary. Existing subitem B is re-lettered to subitem A.

New subitem A is amended to modify section 1104.4.1 to replace the term “level” with “accessible story” and to add “occupied roofs” for consistency with the new language of section 1104.4.1 of the 2018 IBC. Exception number 1 is amended by adding the phrase “or occupied roofs” to make the language in the exception consistent with changes made to it by the 2018 IBC. Exception number 2 is amended by modifying the term “levels” to “stories, mezzanines or occupied roofs” for consistency with the code language as written in the 2018 IBC. Replacing the vague term “levels” with “stories, mezzanines or occupied roofs” is reasonable and needed to clarify the types of spaces the requirements apply to. Existing exception 4 is deleted because the 2018 IBC now addresses vertical access to elevated employee work stations within courtrooms in section 1104.4.1. Therefore, exception number 4 is no longer necessary and is being deleted.

Item 2 and Item 3 of section 1104.4.2 are revised to correct a typographical error omitting the parentheses around the occupancy classifications. The parentheses are necessary to indicate the requirements apply to health care providers, nongovernment passenger transportation, and airport facilities located in those occupancies.

B. Section 1104.5, Location (re-lettered). Existing subitem C is re-lettered to subitem B because existing subitem A is proposed to be deleted and existing subitem B is being relettered to subitem A. The language of the subitem remains unchanged.

Subpart 5, Section 1105, Accessible entrances.

accessible approach routes. *See* Section 203.9 of the 2004 ADAAG and section 1103.2.2 of the 2018 IBC.

B. Section 1105.1.6, Tenant Spaces. Existing subitem B is re-lettered to subitem C. New subitem B is added to delete section 1105.1.6 of the 2018 IBC and its exception. Section 1105.1.6 requires one accessible entrance be provided to tenants and the exception does not require an accessible entrance be provided for self-service storage facilities that are not accessible. The Department is carrying forward the existing amendment modifying section 1105.1 to require a minimum of sixty percent of public entrances to tenant spaces be accessible and each tenant in a building to provide an accessible public entrance. The existing exception 1 does not require accessible entrances to areas not required to be accessible; thereby, exempting self-service storage facilities not required to be accessible from the accessible entrance requirement. It is reasonable to delete section 1105.1.6 of the 2018 IBC because the existing requirement provides for more accessible tenant entrances and does not require accessible entrances for areas not required to be accessible.

C. Section 1105.2, Dwelling unit and sleeping unit entrances. Existing subitem B is re-lettered to subitem C. This subitem is modified by replacing the section reference number to reflect the 2018 IBC renumbering.

Subpart 6. IBC Section 1107, Dwelling units and sleeping units.

A. Section 1107.3, Accessible spaces. The existing modification to section 1107.4 is deleted because the 2018 IBC now contains similar language. Therefore, this modification is no longer necessary. The language of the subitem is amended to delete exception 3 of section 1107.3 of the 2018 IBC. Exception 3 is being deleted because existing rule part 1341.1004, subpart 1, modifies ICC A117.1-2009 to address changes in level from the interior space of a Type B unit to exterior decks, patios, and balconies. The change in level is a technical provision and more appropriately belongs in the ICC A117.1 standard. The deletion of the third exception is necessary to eliminate conflict between the 2018 IBC and ICC A117.1-2009, as modified by this rule chapter.

D. Section 1107.5.1.3, Boarding care. The heading of this subitem is amended to clarify that section 1107.5.1.3 is being added to Section 1107.5.1, Group I-1, of the 2018 IBC.

E. Section 1107.5.2, Group I-2 nursing homes. This subitem is amended to increase the percentage of accessible resident sleeping rooms required in Group I-2 nursing homes from ten percent to fifty percent to comply with the 2010 ADA Standards for Accessible Design, the 2018 IBC, and the Minnesota Department of Health's licensing requirements. Existing Minnesota Rules, part 1341.0011, subpart 6, subitem E, requires only ten percent of resident rooms to be accessible in Group I-2 nursing homes. However, both the 2010 ADA Standards for Accessible Design and the 2018 IBC require fifty percent.

The ICC and the Minnesota Department of Health ("MDH") have identified a national need for more accessible resident rooms in nursing homes and have revised and supported the IBC, respectively, to increase the required percentage of accessible resident rooms. MDH recognizes and supports a need for more accessible resident rooms in nursing homes because the number of persons with disabilities, including the population of elderly persons in general, is

increasing. As a result, MDH has required more than ten percent of the resident rooms in licensed nursing homes to be accessible. The healthcare industry also recognizes the demand for more accessible resident rooms and typically constructs Group I-2 nursing homes with a greater number of accessible resident rooms than is required by the existing rule part. The proposed amendment is therefore needed to come into conformity with the ADA and to make more resident rooms accessible to accommodate both the increase in disabled and elderly nursing home populations and to standardize accessibility requirements throughout the state of Minnesota.

As noted in paragraph number (5) of the Regulatory Analysis section above, the proposed amendment will increase the cost of construction for Group I-2 nursing homes where the resident rooms contain toilet rooms. The cost to provide a resident room with accessible features is minimal. However, if a toilet room is provided in the accessible resident room, then the toilet room must be accessible as well. An accessible toilet room is twenty square feet larger than a toilet room without accessible features to allow for wheelchair maneuverability. The additional square footage required for an accessible toilet room increases the cost of construction by approximately \$8,000 per an accessible toilet room.

This amendment is needed to re-align the existing Minnesota Accessibility Code with the federally mandated ADA Standards for Accessible Design and the requirements of the 2018 IBC. It also addresses a recognized need in Minnesota for a greater number of accessible resident sleeping rooms in Group I-2 nursing homes. The increase in the required number of accessible resident rooms will increase construction costs for accessible resident rooms containing toilet rooms. However, this increase in costs is justified because it is in direct response to a need for realignment and uniformity with a federal ADA regulatory mandate and a need for additional accessible resident rooms in nursing homes in Minnesota.

F. Section 1107.6 Group R. Existing subitem F is deleted because the 2018 IBC now contains similar language. Therefore, this modification is no longer necessary and is being deleted. Existing subitem G is re-lettered to subitem F, but the content remains unchanged.

G. Section 1107.6.1, Group R-1 (re-lettered). Existing subitem H is re-lettered to subitem G, but the content remains unchanged.

H. Section 1107.6.1.1, Accessible units (re-lettered). Existing subitem I is re-lettered to subitem H. This subitem is modified by deleting the existing language to further clarify the calculation of required number of accessible dwelling units or sleeping units on a site with multiple structures. The existing language caused confusion among users as to the calculation of the required number of accessible units on a site with multiple structures. The proposed language now mirrors that of 2018 IBC section 1107.6.1.1 which directs the user to calculate the required number of accessible units based on whether the number of sleeping units or dwellings units within a structure is more than 50. These changes are necessary to coordinate with changes made to the 2018 IBC and to assist with uniform enforcement of accessibility provisions for sites containing multiple structures. Unlike 2018 IBC section 1107.6.1.1, the modified subitem does not include the language of that section which addresses dispersion of accessible dwelling units or sleeping units because Minnesota rules address “dispersion” separately in existing subitem K, which the proposed rules now re-letter to subitem J.

I through K (re-lettered). Sections 1107.6.1.3, Communication features, 1107.6.1.4, Dispersion, and 1107.6.1.5, Passenger doors, are re-lettered but the content remains unchanged.

L. Section 1107.6.2, Group R-2 (re-lettered). Existing subitem M is re-lettered to subitem L. This subitem is also modified by replacing section numbers because they were renumbered in the 2018 IBC. Additionally, 2018 IBC section 1107.6.2.1, Live/work units, is deleted because the requirements for live/work units are deleted from Chapter 1305 of the Minnesota State Building Code, allowing local zoning ordinances to apply instead. Live/work units are commonly referred to as "home occupations" and are regulated in Minnesota by local zoning codes, not by the State Building Code. Therefore, this modification is reasonable because it will promote consistency with Chapter 1305 and prevent conflicts with local zoning codes and regulations.

M. Section 1107.6.2.2.1, Type A units (re-lettered). Existing subitem N is re-lettered to subitem M. This subitem is also modified by replacing the section number due to renumbering in the 2018 IBC. However, the language of this subitem remains unchanged.

N. Section 1107.6.2.3, Group R-2 other than apartment houses, monasteries, and convents (re-lettered). Existing subitem O is re-lettered to subitem N. This subitem is also modified by replacing section numbers because they are renumbered in the 2018 IBC. The new language corresponds to changes made to the 2018 IBC and clarifies that only one accessible bedroom in a dwelling or sleeping unit may be counted towards the number of required accessible bedrooms within certain types of congregate living facilities. The existing language caused confusion and resulted in some designers locating all required accessible bedrooms within a single dwelling unit or sleeping unit so that persons with disabilities were located in a single dwelling unit or sleeping unit. The proposed change is necessary to ensure accessible bedrooms are dispersed into several sleeping or dwelling units in the congregate living facility so that persons with disabilities are not isolated in a single dwelling or sleeping unit.

O. Section 1107.6.3, Group R-3 (re-lettered). Existing subitem P is re-lettered to subitem O. Section 1107.6.3.2 is modified to add dormitories, sororities, and fraternities. Dormitories, sororities, and fraternities can be classified as Group R-3 occupancies, so it is reasonable to clarify the requirements of this section that apply to those uses. The added language also clarifies that all bedrooms within congregate living facilities, dormitories, sororities, fraternities, boarding houses, and care facilities are to be counted as sleeping units. A correct count of the number of sleeping units is necessary to calculate the correct required number, and dispersal of, accessible and Type B units. These modifications are reasonable as they coordinate with changes made in the 2018 IBC.

P and Q (re-lettered). Section 1107.7, General exceptions, and 1107.7.6, Owner occupied units, are re-lettered but the content remains unchanged.

Subpart 8. IBC Section 1109, Other features and facilities.

C. Section 1109.2.2, Water closet compartment. This subitem is modified to coordinate with the requirements of the 2018 IBC by requiring five percent of water closet compartments to be wheelchair accessible and where there are at least two compartments, then five percent must be ambulatory accessible. The existing language permitted buildings with several water closet compartments to have only one wheelchair-accessible compartment and one ambulatory accessible compartment; effectively permitting stadiums, arenas, and public transportation facilities to have only two accessible water closet compartments for the entire facility. This amendment is necessary to ensure larger facilities have a sufficient quantity of accessible compartments. Additionally, existing subpart 1a, which is being relocated to subpart 1b, ensures that smaller buildings will provide accessible compartments by requiring rounding to the next whole number when a percentage of required facilities or elements is calculated. Therefore, where one water closet compartment is provided in a building it must be wheelchair-accessible. Finally, this subitem contains needed grammatical changes.

F. Section 1109.7, Elevators (re-lettered). Existing subitem F is deleted because the 2018 IBC contains similar language in section 1110.4.14. Therefore, this modification is no longer necessary. Existing subitem G is re-lettered to subitem F, but the content remains unchanged.

G. Section 1109.8, Lifts (re-lettered). Existing subitem H is re-lettered to subitem G. Additionally, item number 1 is modified to delete the limiting phrase “Group A occupancies” to conform to changes made in the 2018 IBC and because occupancies other than assembly occupancies have performing areas and speaker platforms that require accessible routes as well. It is reasonable to permit platform lifts as a part of the accessible route to performing areas and speaker platforms in all occupancies, rather than just Group A occupancies. This change is also reasonable as it corresponds to changes made to the 2018 IBC.

Existing item 5 of this subitem is deleted for consistency with changes made to the 2018 IBC. The deletion of existing item 5 is reasonable and needed because accessible routes to dining terraces are addressed by the proposed changes to section 1104.4.1 located in existing subpart 4, new subitem A, and section 1108.2.9 of the 2018 IBC. Finally, because existing item 5 is deleted, existing items 6 through 11 are renumbered 5 through 10, accordingly.

H through K (re-lettered). Sections 1109.10, Detectable warnings, 1109.12.3, Point of sale and service counters, 1109.14, Fuel dispensing systems, and 1109, Other features and facilities, are re-lettered but the content remains unchanged.

Subpart 8a. IBC Section 1110, Recreational Facilities (new subpart).

A. Section 1110.4.8, Amusement rides. Section 1110.4.8 of the 2018 IBC is modified to require amusement rides to comply with sections 1110.4.8.1 and 1110.4.8.2 because the proposed rule deletes section 1110.4.8.3 of the 2018 IBC. It is reasonable to modify the section reference numbers to provide the correct code sections that amusement rides are required to comply with.

B. Section 1110.4.8.2, Wheelchair spaces, ride seats designed for transfer, and transfer devices. This subitem modifies section 1110.4.8.2 of the 2018 IBC to delete the requirements for amusement ride seats designed for transfer and transfer devices to be on an accessible route. The Minnesota State Building Code does not regulate recreational equipment, including amusement rides, and recreational equipment is exempt from accessibility provisions. *See* Minnesota Rules, part 1341.0011, subpart 3, item E (Scoping requirements). The Minnesota Accessibility Code does not require amusement ride seats to be accessible, nor can it require a device be provided to transfer a person from a wheelchair to the ride. However, the Minnesota Accessibility Code can require that accessible routes be provided, so section 1110.4.8.2 is modified to require an accessible route to the position serving the wheelchair space.

C. Section 1110.4.8.3, Minimum number. This subitem is added to delete IBC section 1110.4.8.3 regarding the minimum number of wheelchair spaces and amusement ride seats required for amusement rides. As noted above, Minnesota Rules, part 1341.0011, subpart 3, exempts recreational equipment, including amusement rides, from accessibility provisions because the Minnesota State Building Code does not regulate recreational equipment. It is necessary to delete IBC section 1110.4.8.3's provisions for amusement rides because the regulation of amusement rides and equipment is not within the scope of the Minnesota State Building Code.

D. Section 1110.4.12, Miniature golf facilities. This subitem is added to delete IBC section 1110.4.12 and its subsections addressing accessibility requirements for miniature golf facilities. As noted above, Minnesota Rules, part 1341.0011, subpart 3, item E, exempts recreational equipment, including miniature golf facilities, from accessibility provisions because the Minnesota State Building Code does not regulate recreational equipment. It is necessary to delete IBC section 1110.4.12's provisions for miniature golf facilities because the regulation of miniature golf facilities is not within the scope of the Minnesota State Building Code.

Subpart 9. IBC Section 1111, Signage.

This subpart is modified by renumbering the section and subsection references throughout to reflect the renumbering of these references in the 2018 IBC.

A. Section 1111.1 General. This subitem is amended by renumbering the section numbers to coordinate with renumbering changes made to the 2018 IBC. No changes are made to the content of this subitem.

B. Section 1111.2, Designations. This subitem is amended by renumbering the section reference numbers to coordinate with renumbering changes made to the 2018 IBC. Item number 4 is added to this subitem to require signs identifying accessible lockers. This requirement is needed and reasonable as it corresponds to changes made to the 2018 IBC concerning accessible locker signage.

C. Section 1111.3, Directions and informational signs. This subitem is amended by renumbering the section reference numbers to coordinate with renumbering changes made to the 2018 IBC. Section 1111.3 is also modified to clarify that directional and informational signs are

to comply with the visual character requirements found in ICC A117.1-2009. This modification is consistent with changes made to the 2018 IBC and is needed and reasonable because it specifies what signage requirements contained in ICC A117.1-2009 are required to be complied with in Minnesota.

Section 1111.3.1 is added to this subitem to require that directional signs be provided at building elements without accessibility features to direct building occupants to the nearest similar accessible building element. This change corresponds with requirements of the ADA and changes made to the 2018 IBC. It is reasonable to require directional signs so persons with disabilities know the location of the nearest accessible building element.

D. Section 1111.4, Means of Egress. This subitem is amended by renumbering the section numbers to coordinate with renumbering changes made to the 2018 IBC. No changes are made to the content of this subitem.

E. Section 1111.5, Parking. This subitem is amended to exempt parking facilities with four spaces or fewer from providing an identified accessible parking space. The amendment is reasonable and needed to coordinate with the 2010 ADA Standards for Accessible Design and section 1111.1(1) of the 2018 IBC.¹⁴ Accessible parking spaces are effectively the size of two standard parking spaces. A parking facility with four spaces, if required to provide an accessible parking space, will have one accessible parking space and two standard spaces. Smaller businesses with four or fewer parking spaces may have less business because of the reduction in the number of parking spaces available to all customers.

While following the ADA and the 2018 IBC may result in the unavailability of disability parking spots in some small commercial parking lots, Minnesota law allows vehicles with disability parking certificates or disability plates to legally park at an angle and occupy two standard spaces where a disability parking space is unavailable.¹⁵ It is reasonable to exempt parking facilities with four spaces or fewer from providing an identified accessible parking space because the reduction in total available parking spaces without the exemption can be burdensome to small business and facilities with limited parking, whereas persons with disabilities will still be permitted to park in the facility by using two standard spaces and parking at an angle when the need arises.

Exception number 2 is amended to specify that the identification of accessible parking spaces is not required for Group I-1, R-2, R-3, and R-4 occupancies with assigned parking spaces. This exception corresponds to changes made to section 1106.2 of the 2018 IBC, which identifies accessible parking space requirements for specific residential facilities. The language is further amended to add “sleeping units” because the occupancies listed may contain either dwelling units or sleeping units under the 2018 IBC.

¹⁴ The 2010 ADA Standards for Accessible Design for public accommodations and commercial facilities include both the Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADAAG regulations at 36 CFR part 1191, appendices B and D. The signage and identification exception for parking lots with four or fewer total spaces is found at section 216.5 of the 2004 ADAAG.

¹⁵ See [Minnesota Statutes, section 169.346, subdivision 1a \(2018\)](#)

F through J. These subitems are amended by renumbering the section numbers to coordinate with renumbering changes made to the 2018 IBC. No changes are made to the content of these subitems.

Subpart 11. Section 1111, Additions [REPEAL]. Subpart 11 is being repealed because the proposed rule incorporates by reference section 305 of the 2018 IEBC, with amendments, to address accessibility for additions to existing buildings. The 2018 edition of the IBC does not address requirements for existing buildings. For consistency with I-code formatting, it is no longer necessary to add a section to the IBC to address accessibility requirements for additions added to existing buildings. Therefore, this subpart is being repealed because it is no longer needed.

Subpart 12. Section 1112, Alterations [REPEAL]. Subpart 12 is being repealed because the proposed rule incorporates by reference section 305 of the 2018 IEBC, with amendments, to address accessibility when alterations are made to existing buildings. The 2018 edition of the IBC does not address requirements for existing buildings, including alterations. For consistency with I-code formatting, it is no longer necessary to add a section to the IBC to address accessibility requirements when alterations are made to existing buildings. Therefore, this subpart is being repealed because it is no longer needed.

Subpart 13. Section 1113, Change of occupancy [REPEAL]. Subpart 13 is being repealed because the proposed rule incorporates by reference section 305 of the 2018 IEBC, with amendments, to address accessibility when an existing building undergoes a change of occupancy. The 2018 edition of the IBC does not address requirements for existing buildings, including changes of occupancy. For consistency with the I-code formatting, it is no longer necessary to add a section to the IBC to address accessibility requirements for existing buildings undergoing a change of occupancy. Therefore, this subpart is being repealed because it is no longer needed.

1341.0030 IEBC SECTION 305, ACCESSIBILITY FOR EXISTING BUILDINGS

This new rule part is added to modify section 305 of the 2018 IEBC. Section 305 of the 2018 IEBC addresses accessibility requirements for additions, alterations, and changes of occupancy to existing buildings. The proposed amendments to section 305 do not make substantive changes to existing rule requirements for existing buildings undergoing renovation. However, the amendments are relocated from existing part 1341.0011, subparts 11, 12, and 13 and modified for consistency with the 2018 IEBC. The 2018 edition of the IBC does not address accessibility for existing buildings, so it is inconsistent with I-code formatting to modify the IBC to include requirements for existing buildings. The proposed amendment to part 1341.0005 incorporates section 305 of the 2018 IEBC by reference.

Subpart 1. Section 305.1.2, References to other International Code Council codes. This section is added to the IEBC to specify that any references to the International Building Code in section 305 means the Minnesota Accessibility Code, Minnesota Rules, part 1341.0011. Section 305 of the IEBC frequently directs users to accessibility provisions located in chapter 11 of the IBC. Chapter 11 of the IBC is amended by part 1341.0011 of this chapter. This subpart is

necessary to direct code users to the IBC code provisions as amended for use in Minnesota so users apply the correct code provisions.

Subpart 2. Section 305.4.2, Complete change of occupancy. Section 305.4.2 of the 2018 IBC is modified to add item number 7. The text of item number 7 is consistent with existing part 1341.0011, subpart 13, but is relocated to this rule part and revised due to reformatting of the 2018 IEBC. The language of item number 7 is also revised for clarity and consistency with changes made to part 1341.0011, subpart 9, Signage. Additionally, an exception is added to address the inclusion of Type B dwelling or sleeping units after a complete change in occupancy. If the change in occupancy results in Type B dwelling units being provided, then the exception permits an exemption from the additional accessible route requirements of this subpart. This exception is consistent with long standing IBC requirements for new buildings and is needed to maintain the lower accessibility character of Type B units in existing buildings undergoing alteration, renovation or repair. As well as encouraging the creation of additional Type B units where none or fewer existed before, the proposed exception will also tend to reduce overall construction costs.

Subpart 3. Section 305.7, Alterations affecting an area containing a primary function. The current requirements addressing alterations affecting an area containing a primary function located in existing part 1341.0011, subpart 12, subitem G, are relocated to this proposed subpart and the formatting and language is revised for clarity and ease of use. This proposed subpart makes no substantive changes to the existing requirements for alterations affecting an area containing a primary function. However, similar to the proposed exception in subpart 2 above, exception number 5 is added to address the inclusion of Type B dwelling or sleeping units after alterations affecting an area occur. This exception is consistent with long-standing IBC accessibility requirements for new buildings and is needed to maintain the lower accessibility character of Type B units in existing buildings undergoing alteration, renovation, or repair. As well as encouraging the creation of additional Type B units where none or fewer existed before, the proposed exception will also tend to reduce overall construction costs.

Subpart 4. Section 305.8. Scoping for alterations.

A. Section 305.8.2, Elevators. Section 305.8.2 of the 2018 IBC is modified to require elevators to comply with Minnesota Rules, chapter 1307, Minnesota Elevators and Related Devices. No other substantive changes were made. It is reasonable to modify this section to require elevators to comply with the Minnesota rules chapter addressing elevator safety.

B. Section 308.8.3, Platform lifts. Section 305.8.3 of the 2018 IEBC is modified to require platform lifts to comply with Minnesota Rules, chapter 1307, Minnesota Elevators and Related Devices. No other substantive changes were made. It is reasonable to modify this section to require platform safety to comply with the Minnesota rules chapter addressing platform lift safety.

C. Section 305.8.7, Type A dwelling or sleeping units. Section 305.8.7 of the 2018 IEBC is modified to require the IBC requirements for Type A units to apply when more than seven Group R-2 dwelling units or sleeping units are altered or added. This is consistent with existing part 1341.0011, subparts 11 and 12 requirements for Type A units when additions or alterations are

made to Group R-2 occupancy dwelling or sleeping units. This subitem makes no substantive changes to the existing requirements for Type A units when Group R-2 dwelling or sleeping units are altered or added.

D. Section 305.8.10.1 Ambulatory compartment. The 2018 IEBC is modified by adding subsections 305.8.10.1 and 305.8.10.2 to permit an existing toilet or bathing room to be altered to include an ambulatory compartment where it would be technically infeasible to alter the existing toilet and bathing rooms to include an accessible compartment or to provide a family or assisted-use toilet or bathing room. An ambulatory compartment contains features for use by persons with mobility disabilities but lacks sufficient area in which to maneuver a wheelchair. The provisions in these additional subsections are consistent with the requirements of existing part 1341.0011, subpart 12, item H, for ambulatory compartments in existing toilet or bathing rooms undergoing alteration. It is necessary to add subsections 305.8.10.1 and 305.8.10.2 to maintain an alternative method of compliance so compartments with accessible features are provided where there would otherwise be none. This subitem makes no substantive changes to the existing requirements for ambulatory compartments for existing buildings undergoing alteration.

E. Section 305.8.13, Fuel dispensers. Section 305.8.13 of the 2018 IEBC is deleted because the Minnesota State Building Code does not address fuel dispensers. Facilities are required to provide accessible fuel dispensers by the ADA. The requirement for fuel dispensing systems is deleted in the current Accessibility Code for new buildings and facilities. This deletion is necessary to carry forward current Minnesota State Building Code requirements and ensure uniform enforcement.

F. Section 305.8.15, Amusement rides. Section 305.8.15 of the 2018 IEBC is deleted because it addresses the alteration of the structural or operational characteristics of an amusement park ride that changes the amusement ride's performance. The Minnesota State Building Code does not regulate recreational equipment, including amusement rides and their performance, and recreational equipment is exempt from accessibility provisions. *See* Minnesota Rules, part 1341.0011, subpart 3 (Scoping requirements). Therefore, it is reasonable to delete this section because the State Building Code does not regulate amusement rides.

G. Section 305.8.16, Addition of pedestrian route. A section is added to require an accessible route be provided where a pedestrian route is added. This is necessary to ensure any new route of travel in an existing building is accessible. This requirement is consistent with the requirement located in existing part 1341.0011, subpart 12, item H, and contains no substantive changes to the existing requirements for accessible routes.

H. Section 305.8.17, Assembly areas. Three sections are added to address requirements for wheelchair seating and performance areas in assembly areas undergoing alterations where full compliance with accessibility requirements is technically infeasible. This amendment is reasonable because it provides alternative methods of compliance. The requirements in this subitem are consistent with existing requirements located in existing part 1341.0011, subpart 12, item H, for seating and performance in existing assembly areas undergoing alterations. No substantive changes are made to the existing requirements for wheelchair seating and accessible routes to performance areas.

I. Section 305.8.18, Check-out aisles. Section 305.8.18 is added to require existing check-out aisles undergoing alteration be made accessible until the number required for new check-out aisles found in IBC section 1109.12.2 is reached. This is reasonable to ensure that accessible check-out aisles are provided where check-out aisles are undergoing remodeling. This requirement is consistent with the existing requirements located in part 1341.0011, subpart 12, item H, for the alteration of check-out aisles. This subitem makes no substantive changes to the existing Accessibility Code requirements for the alternation of check-out aisles.

J. Section 305.8.19, Parking restriping. Section 305.8.19 is added to address changes and alterations made to parking lots. This requirement is consistent with the existing requirement located in part 1341.0011, subpart 12, item H, and makes no substantive changes to the existing requirements for parking restriping.

1341.0406 A117.1 SECTION 406, CURB RAMPS AND BLENDED TRANSITIONS.

Section 406.15 is added to provide design criteria for accessible parallel curb ramps. The current Accessibility Code provides design criteria for curb ramps, but does not provide any guidance for the design of parallel curb ramps. Parallel curb ramps have been installed in Minnesota; however, the design and dimensions of the parallel curb ramps are inconsistent because uniform criteria is not provided in the Minnesota State Building Code. The 2017 edition of the ICC A117.1 now contains design criteria for parallel curb ramps and the proposed amendment uses the criteria of that document to ensure that parallel curb ramps are accessible. This amendment is necessary for uniform application and enforcement of design criteria for parallel curb ramps so they are accessible to everyone.

The Department does not propose incorporating by reference the entirety of the 2017 edition of the ICC A117.1 at this time. The 2018 editions of IBC and IEBC reference the 2009 edition of the ICC A117.1. The 2017 edition of the ICC A117.1 has significant changes from the 2009 edition that may conflict with provisions of the 2018 editions of the IBC and IEBC. Therefore, the Department has decided not to incorporate by reference the entirety of the 2017 edition of the ICC A117.1, and instead is modifying the 2009 edition to include provisions of the 2017 edition of the ICC A117.1 standard as necessary to improve accessibility.

1341.0904 A117.1 SECTION 904, SALES AND SERVICE COUNTERS

Section 904 of the 2009 A117.1 standard is modified to clarify criteria for sales and service counters and windows. The proposed changes are based on the 2017 edition of the A117.1 standard and provide more design flexibility for the height and length of accessible sales and service counters and windows and clarifies that accessibility requirements apply only to the public use side of the counter. A section is added to address accessibility for sales and services counters with vertical barriers and to permit vertical barriers of greater heights where security glazing is necessary. This is reasonable so vertical barriers are accessible but service or counter window staff are still protected in buildings where it is necessary. Additionally, the requirements for parallel and forward approach are modified to require a minimum 12 inches of space between

the accessible counter and any projecting objects above so that projecting objects do not impede access to the counter. The proposed modifications are reasonable as they permit flexibility in the design of sales and service counters while improving accessibility.

The 2017 edition of the ICC A117.1 contains similar design criteria for sales and service counters. However, the Department does not propose incorporating by reference the entirety of the 2017 edition of the ICC A117.1 at this time. The 2018 editions of IBC and IEBC reference the 2009 edition of the ICC A117.1. The 2017 edition of the ICC A117.1 has significant changes from the 2009 edition that may conflict with provisions of the 2018 editions of the IBC and IEBC. Therefore, the Department has decided not to incorporate by reference the entirety of the 2017 edition of the ICC A117.1, and instead is modifying the 2009 edition to include provisions of the 2017 edition of the ICC A117.1 as necessary to improve accessibility.

1341.1002 A117.1 SECTION 1002, ACCESSIBLE UNITS.

Section 1002.15 of the ICC A117.1-2009 standard is modified to add a section requiring a facility with an accessible dwelling or sleeping unit to provide at least one bed that is between 17 inches and 23 inches from the floor to the top of the mattress. Many lodging facilities, such as hotels, have beds of greater height that are difficult for person in mobility devices to access. It is reasonable to require an accessible unit to have a bed that is accessible to persons in mobility devices.

The 2017 edition of the ICC A117.1 contains similar requirements for beds in accessible units. However, the Department does not propose incorporating by reference the entirety of the 2017 edition of the ICC A117.1 at this time. The 2018 editions of IBC and IEBC reference the 2009 edition of the ICC A117.1. The 2017 edition of the ICC A117.1 has significant changes from the 2009 edition that may conflict with provisions of the 2018 editions of the IBC and IEBC. Therefore, the Department has decided not to incorporate by reference the entirety of the 2017 edition of the ICC A117.1, and instead is modifying the 2009 edition to include provisions of the 2017 edition of the ICC A117.1 as necessary to improve accessibility.

EFFECTIVE DATE

In accordance with Minnesota Statutes, section 326B.13, subdivision 8, the Commissioner has determined that it is necessary to establish March 31, 2020, or five business days after publication of the Notice of Adoption in the *State Register*, whichever is later, as the effective date of this proposed rule chapter. The Commissioner has found and determined that it is in the public's interest and necessary to protect public health and safety to have this proposed Code Chapter effective at the same time as other related proposed Minnesota State Building Code sections, which may result in an earlier effective date than provided for in Minnesota Statutes, section 326B.13, subdivision 8.

Because other related and newly proposed Chapters of the Minnesota State Building Code are scheduled to have an effective date of March 31, 2020, it is necessary for Minnesota's proposed accessibility provisions found in Chapter 1341 to become effective at the same time to alleviate any potential confusion, conflicts or misapplication of specific and interrelated Code

requirements by industry members, code enforcement officials, and members of the public. A common effective date for all newly adopted State Building Code chapters is essential for life and building safety because many of these chapters reference one another and are designed to work together to provide the user with a complete, current, and conflict-free reference for building specifications and requirements. Therefore, coordination of the effective dates for all newly adopted amendments to the State Building Code, including the accessibility provisions found in the underlying proposed rule, is necessary and reasonable.

CONCLUSION

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



7/12/19
Date

Nancy J. Leppink, Commissioner
Department of Labor and Industry

EXHIBIT A

Construction Codes Advisory Council Members

Scott McLellan, Department of Labor and Industry Commissioner's Designee/Chair

Jim Smith, Department of Public Safety Commissioner's Designee

Scott Novotny, Board of Electricity

Patrick Higgins, Certified Building Official

Ken Hinz, Commercial Building Industry

Thomas Erdman, Commercial Building Owners/Managers

Laura McCarthy, Fire Marshal

Todd Gray, Heating and Ventilation Industry

Gerhard Guth, Licensed Architect

Thomas Downs, Licensed Professional Engineer

Mike Paradise, Licensed Residential Building Industry

Jennifer DeJournett, Local Units of Government

Mark Brunner, Manufactured Housing Industry

Dan McConnell, Minnesota Building and Construction Trades Council

EXHIBIT B

1341 Technical Advisory Group Members

Karen Gridley, TAG Lead, Department of Labor and Industry

Ryan Rehn, TAG Co-Lead, Department of Labor and Industry

Lee Gladitsch, Municipal Building Official, City of St. Cloud

Gerhard Guth, American Institute of Architects Minnesota

Margot Imedieke Cross, Minnesota Council on Disability

Jason Nerison, Building Owners and Managers Association

EXHIBIT C



Office Memorandum

Date: May 31, 2019

To: Jeffrey F. Lebowski,
General Counsel,
Department of Labor and
Industry

From: Laurena Schlottach-Ratcliff,
Executive Budget Officer,
Minnesota Management and
Budget

Subject: M.S. 14.131 – Review of Proposed Amendments to the Rules Governing the Minnesota Accessibility Code, Minnesota Rules, Chapter 1341; Revisor’s ID Number RD4514

Background

The Department of Labor and Industry (DLI) is proposing amendments to the rules relating to the Minnesota Accessibility Code, in Minnesota Rules, Chapter 1341. Pursuant to M.S. 14.131, the Commissioner of Minnesota Management and Budget has been asked to help evaluate the fiscal impacts and benefits these changes may have on local units of government.

As identified in the Statement of Need and Reasonableness (SONAR), pursuant to M.S. 326B.106, the Commissioner of DLI must review model building codes every six years for potential adoption, with amendments, for use in Minnesota beginning with the 2018 editions of the model codes. Based on the review of the International Building Code and International Existing Building Code the agency is proposing to amend Chapter 1341 to provide direction for newly constructed buildings and existing buildings undergoing renovation as to which elements are required to be accessible and how accessible elements should be designed.

Evaluation

On behalf of the Commissioner of Minnesota Management and Budget, I have reviewed the proposed changes and the draft of the SONAR to explore the potential fiscal impact these changes may have on local governments.

The proposed rule is anticipated to impact building contractors, designers, engineers, certified building officials and their municipal building departments, material manufacturers, building owners and the public. While there are a number of proposed changes to the code, many of the proposed changes either provide alternatives for implementing the standards or conform to federal accessibility

guidelines and should not have a fiscal impact on local government. The only proposed change that clearly impacts local government relates to signage of building elements in which the projected cost for implementing this change would be dependent on the size and scope of the building and signage.

In summary, these proposed changes will have a fiscal impact on local government.

cc: Angela Vogt, Executive Budget Coordinator, Minnesota Management and Budget