

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE 21-047)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 321.097 (1) (b) and (note), and (4) and (note); to renumber SPS 321.40 (1) (b); to renumber and amend SPS 321.097 (1) (a) and (note); to amend SPS 320.06 (1) (a) 1., 320.07 (25) and (27), 321.097 (title), (2) (a) and (note), (b) 1. and 2., (c) 1. and 2., (d) 1. and (note), and (3); and to create SPS 320.05 (11) and (12), 320.06 (1) (a) 1. (note), 320.07 (25) (note), (27) (note), (59p) and (59p) (note), 321.097 (1) (ag) and (note), 321.40 (1) (b) 2., and (c) 2m. and (note); relating to legislative update to the Uniform Dwelling (one-and 2-family dwellings) Code and Manufactured Home Communities.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 101.63 (1) and 101.64, Stats.

Statutory authority: Sections 101.63, 101.64 (1) (c), and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 101.63 (1), Stats. requires the department to adopt rules establishing standards for the construction and inspection of one- and 2- family dwellings and components.

Section 101.64 (1) (c), Stats., allows the department to revise the Uniform Dwelling Code rules in consultation with the Uniform Dwelling Code Council.

Section 227.11 (2) (a), Stats., authorizes the Department to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

Related statutes or rules:

Various other rules promulgated by the Department in ch. SPS 320 address the construction and inspection of one and 2-family dwellings.

Plain language analysis:

During the 2017-2018 session, the Legislature made changes to the uniform dwelling code. The proposed rules update SPS 320 and 321.

- Adds the religious and primitive hunting cabin statutory exceptions to enforcement of the uniform dwelling code by the Department of Safety and Professional Services and cities, towns, villages, and counties who have adopted the uniform dwelling code.
- Gives cities, towns, and villages the authority over the construction and inspection of new dwellings except where an ordinance does not conform to the uniform dwelling code or any order of the Department of Safety and Professional Services. An owner may waive the non-conforming provision making it unenforceable.
- Updates the language of the rules from “carbon monoxide alarms” to “carbon monoxide detectors” to provide uniformity of terms in the uniform dwelling code.
- Updates the meaning of “fuel-burning appliance” to mean a device that burns fossil fuel or carbon-based fuel, and that produces carbon monoxide as a combustion by-product in the uniform dwelling code.
- Defines “carbon monoxide detector” to mean an electronic or battery-operated device or system that sounds an alarm when an unsafe level of carbon monoxide is in the air.
- Removes references to “tourist rooming houses” in the uniform dwelling code because tourist rooming houses are covered by the commercial building code.
- Clarifies the definition of “manufactured home owner” to exclude a person that leases a manufactured home from another.

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

Federal regulations do not provide provisions for construction of one- and 2-family dwellings other than those for Housing and Urban Development (HUD) manufactured homes and those related to accessibility.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary hearing on Statement of Scope SS 028-19 was held on January 31, 2020. Robert Dupont with the Alliance for Regulatory Reform, as well as James Worker, a registered architect, expressed general support for the scope statement at the hearing.

Comparison with rules in adjacent states:

Illinois:

Illinois has adopted the 2018 edition of the International Residential Code with specific exceptions.

Iowa:

Iowa has adopted the 2015 edition of the International Residential Code with specific exceptions.

Michigan:

Michigan has adopted the 2015 edition of the International Residential Code with specific exceptions.

Minnesota:

Minnesota has adopted the 2012 edition of the International Residential Code with specific exceptions.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing provisions of 2011 Wisconsin Act 21, 2017 Wisconsin Act 59, 2017 Wisconsin Act 109, 2017 Wisconsin Act 240, 2017 Wisconsin Act 243, 2017 Wisconsin Act 330, and 2017 Wisconsin Act 331 in conjunction with the current rules relating to the uniform dwelling code. The Department received input during a meeting with the Uniform Dwelling Code Council. The makeup of the Council is established under s. 15.407 (10), Stats., and consists of members who are appointed by the Governor. The Council includes representatives of several types of small businesses. These businesses provide input on design, construction, and inspection interests relative to the uniform dwelling code. Through the Council, the department was able to gather information on the potential impacts of the rule revisions contained herein.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is attached.

Effect on small business:

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

Agency contact person:

Jon Derenne, Attorney, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8935, Madison, Wisconsin 53705; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

A public hearing was held at 11:00 AM on June 28, 2021. A second public hearing was held on July 16, 2021 at 11:00 AM to ensure full public participation, as technical issues may have limited participation at the June 28, 2021 hearing.

TEXT OF RULE

SECTION 1: SPS 320.05 (11) and (12) are created to read:

SPS 320.05 (11) RELIGIOUS WAIVER. The provisions of this code do not apply to dwellings where a religious waiver has been accepted by the authority having jurisdiction or the department under s. 101.648, Stats.

(12) PRIMITIVE RURAL HUNTING CABINS. The provisions of this code do not apply to a primitive rural hunting cabin.

SECTION 2: SPS 320.06 (1) (a) 1. is amended to read:

SPS 320.06 (1) (a) 1. Except as provided in ss. 101.65 (1c) and 101.651 (1) and (2m), Stats., cities, villages and towns shall exercise jurisdiction over the construction and inspection of new dwellings.

SECTION 3: SPS 320.06 (1) (a) 1. (Note) is created to read:

SPS 320.06 (1) (a) 1. (Note) Section 101.65 (1c), Stats., reads as follows:

101.65 Municipal authority. Except as provided by s. 101.651, cities, villages, towns and counties:

(1c) May not make or enforce an ordinance under sub. (1) that is applied to a dwelling and that does not conform to this subchapter and the uniform dwelling code adopted by the department under this subchapter or is contrary to an order of the department under this subchapter. If any provision of a contract between a city, village, town, or county and an owner requires the owner to comply with an ordinance that does not conform to this subchapter or the uniform dwelling code adopted by the department under this subchapter or is contrary to an order of the department under this subchapter, the owner may waive the provision, and the provision, if waived, is void and unenforceable.

SECTION 4: SPS 320.07 (25) is amended to read:

SPS 320.07 (25) “Dwelling” ~~means any building, the initial construction of which is commenced on or after the effective date of this code.~~ has the meaning given in s. 101.61 (1), Stats.

SECTION 5: SPS 320.07 (25) (Note) is created to read:

SPS 320.07 (25) (Note) Section 101.61 (1), Stats., reads as follows: “Dwelling” means any building that contains one or 2 dwelling units. “Dwelling unit” means a structure or that

part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others. "Dwelling" and "dwelling unit" do not include a primitive rural hunting cabin.

SECTION 6: SPS 320.07 (27) is amended to read:

SPS 320.07 (27) "Dwelling unit" ~~means any building, the initial construction of which is commenced on or after the effective date of this code, which contains one or 2 dwelling units.~~ has the meaning given in s. 101.61 (1), Stats.

SECTION 7: SPS 320.07 (27) (Note), (59p), and (59p) (Note) are created to read:

SPS 320.07 (27) (Note) Section 101.61 (1), Stats., reads as follows: "Dwelling" means any building that contains one or 2 dwelling units. "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others. "Dwelling" and "dwelling unit" do not include a primitive rural hunting cabin.

(59p) "Primitive rural hunting cabin" has the meaning given in s.101.61 (3), Stats.

(59p) (Note) Section 101.61 (3), Stats., reads as follows:

(3) "Primitive rural hunting cabin" means a structure that satisfies all of the following:

- (a)** The structure is not used as a home or residence.
- (b)** The structure is used principally for recreational hunting activity.
- (c)** The structure does not exceed 2 stories in height.
- (d)** The structure satisfies any of the following:
 - 1.** The structure was constructed before December 31, 1997.
 - 2.** The structure results from alterations made to a structure described in subd.1.
 - 3.** The structure replaces a structure described in subd. 1.

SECTION 8: SPS 321.097 (title) is amended to read:

SPS 321.097 (title) ~~Carbon monoxide alarms~~ detectors.

SECTION 9: SPS 321.097(1) (a) and (a) (Note) are renumbered SPS 321.097 (1) (ar) and (1) (ar) (Note) and amended to read:

SPS 321.097 (1) (ar) "Fuel-burning appliance" has the meaning given in s. ~~401.647(1)~~ ~~(b)~~ 101.149 (1) (as), Stats. Fuel-burning appliances include stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, fireplaces and heaters.

(1) (ar) (Note) Section ~~401.647(1)~~ ~~(b)~~ 101.149 (1) (as), Stats., reads as follows:

(as) "Fuel-burning appliance" means a device ~~that is installed in a dwelling,~~ that burns fossil fuel or carbon-based fuel, and that produces carbon monoxide as a combustion by-product.

SECTION 10: SPS 321.097(1) (ag) and (ag) (Note) are created to read:

SPS 321.097 (1) (ag) "Carbon monoxide detector" has the meaning given in s. 101.149 (1) (am), Stats.

(ag) (Note) Section 101.149 (1) (am), Stats., reads as follows:

"Carbon monoxide detector" means an electronic or battery-operated device or system that sounds an alarm when an unsafe level of carbon monoxide is in the air.

SECTION 11: SPS 321.097(1) (b) and (b) (Note) are repealed.

SECTION 12: SPS 321.097 (2) (a), (2) (a) (Note), (2) (b) 1., (2) (b) 2., (2) (c) 1., (2) (c) 2., (2) (d) 1., (2) (d) 1. (Note), and (3) are amended to read:

SPS 321.097 (2) (a) General. ~~Except as provided in sub. (4), listed~~ Listed and labeled carbon monoxide ~~alarms~~ detectors shall be installed and maintained in accordance with s. 101.647 (2) to (6), Stats., in one and 2-family dwellings, for which building permit applications were made or construction commenced on or after February 1, 2011.

(2) (a) (Note) Section 101.647 (2) to (6), Stats., reads:

(2) INSTALLATION AND SAFETY CERTIFICATION. The owner of a dwelling shall install any carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector. A carbon monoxide detector required under this section shall bear an Underwriters Laboratories, Inc., listing mark and may be a device that is combined with a smoke detector.

(3) REQUIREMENTS. (a) The owner of a dwelling shall install a functional carbon monoxide detector in the basement of the dwelling and on each floor level except the attic, garage, or storage area of each dwelling unit. A carbon monoxide detector wired to the dwelling's electrical wiring system shall have a backup battery power supply. Except as provided under par. (b), the occupant of the dwelling unit shall maintain any carbon monoxide detector in that unit. This paragraph does not apply to the owner of a dwelling that has no attached garage, no fireplace, and no fuel-burning appliance.

(am) 1. If the building permit for the initial construction of a dwelling was issued on or after February 1, 2011, and the electrical service for the dwelling is provided by a public utility, as defined in s. 196.01 (5), the owner of the dwelling shall install each carbon monoxide detector required under par. (a) so that it is powered by the dwelling's electrical wiring system, except as provided under subd. 2.

2. The requirement that each carbon monoxide detector be installed in the manner provided under subd. 1. does not apply to a dwelling if the dwelling, when initially constructed, had no attached garage, no fireplace, and no fuel-burning appliance.

(b) If any occupant who is not the owner of a dwelling, or any person authorized by state law or by city, village, town, or county ordinance or resolution to exercise powers or duties involving inspection of real or personal property, gives written notice to the owner that the carbon monoxide detector is not functional, the owner shall provide, within 5 days after receipt of that notice, any maintenance necessary to make that carbon monoxide detector functional.

(4) INSPECTION. ~~The~~ Except as provided under s. 101.64 (2m), department or person authorized by state law or by city, village, town, or county ordinance or resolution to exercise powers or duties involving inspection of real or personal property may inspect a new dwellings dwelling and, at the request of the owner or renter, may inspect the interior of a dwelling unit in a dwelling to ensure compliance with this section.

(5) LIABILITY EXEMPTION. The owner of a dwelling is not liable for damages resulting from any of the following:

(a) A false alarm from a carbon monoxide detector if the carbon monoxide detector was reasonably maintained by the owner of the dwelling.

(b) The failure of a carbon monoxide detector to operate properly if that failure was the result of tampering with, or removal or destruction of, the carbon monoxide detector by a person other than the owner of the dwelling or the result of a faulty detector that was reasonably maintained by the owner of the dwelling.

(6) TAMPERING PROHIBITED. No person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

(2) (b) 1. On floor levels that contain one or more sleeping areas, a carbon monoxide ~~alarm~~ detector shall be installed outside of the sleeping area, within 21 feet of the centerline of the door opening to any sleeping area and in an exit path from any sleeping area.

(2) (b) 2. On floor levels that do not contain a sleeping area, a carbon monoxide ~~alarm~~ detector shall be installed in a common area on each floor level.

(2) (c) 1. Except as provided in subd. 2., carbon monoxide ~~alarms~~ detectors shall be continuously powered by the house electrical service, shall have a backup power supply and shall be interconnected so that activation of one alarm will cause activation of all alarms.

(2) (c) 2. Dwellings with no electrical service shall be provided with battery-powered carbon monoxide ~~alarms~~ detectors in the locations under par. (b). Interconnection is not required in these dwellings.

(2) (d) 1. Carbon monoxide ~~alarms~~ detectors shall be listed and labeled identifying conformance with UL 2034.

(2) (d) 1. (Note) Pursuant to this subdivision, carbon monoxide ~~alarms~~ detectors need to be acceptable under the 2005 edition of the UL 2034 standard, *Single and Multiple State Carbon Monoxide Alarms*.

(3) EXISTING DWELLINGS. ~~Except as provided in sub. (4), listed~~ Listed and labeled carbon monoxide ~~alarms~~ detectors shall be installed and maintained in accordance with s. 101.647 (2) to (6), Stats., in one and 2-family dwellings, for which building permit applications were made or initial construction commenced on or after June 1, 1980, and before February 1, 2011.

SECTION 13: SPS 321.097 (4) and (note) are repealed.

SECTION 14: SPS 321.40 (1) (b) is renumbered SPS 321.40 (1) (b) 1.

SECTION 15: SPS 321.40 (1) (b) 2., 321.40 (1) (c) 2m., and 321.40 (1) (c) 2m. (Note) are created to read:

SPS 321.40 (1) (b) 2. If a requirement of this code applies to a manufactured home or to an attachment to a manufactured home, the manufactured home owner shall comply with that requirement. If the manufactured home is located in a manufactured home community, the manufactured home community operator is not responsible for compliance with that requirement unless the manufactured home community operator is the manufactured home owner.

(1) (c) 2m. "Manufactured home owner" has the meaning given in s. 101.652 (1) (d), Stats.

(1) (c) 2m. (Note) Section 101.652(1)(d), Stats. reads as follows: "Manufactured home owner" does not include a person that leases a manufactured home from another.

SECTION 16: EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22(2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Secretary