

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
: AND PROFESSIONAL SERVICES
DEPARTMENT OF SAFETY AND : ADOPTING RULES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE 22-069)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal and recreate SPS 362.3102; and to create SPS 361.04 (15) and (15g), 362.1207, and 362.2902 (5m), relating to recreational and educational camps.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 101.053

Statutory authority: Sections 101.02 (1) and (15); 101.023; 101.053 (2); 101.12 (1), (3m) (a), and (3m) (e); 101.82 (1); 145.02 (2) (b); and 227.11 (2) (a).

Explanation of agency authority:

Section 101.02 (1), Stats., states "[t]he department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings..."

Section 101.02 (15), Stats., states

“(a) The department has such supervision of every employment, place of employment and public building in this state as is necessary adequately to enforce and administer all laws and all lawful orders requiring such employment, place of employment or public building to be safe, and requiring the protection of the life, health, safety and welfare of every employee in such employment or place of employment and every frequenter of such place of employment, and the safety of the public or tenants in any such public building...

(b) The department shall administer and enforce, so far as not otherwise provided for in the statutes, the laws relating to laundries, stores, licensed occupations, school attendance, bakeries, intelligence offices and bureaus, manufacture of cigars, sweatshops, corn shredders, wood-sawing machines, fire escapes and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or

painting of buildings and structures, and all other laws protecting the life, health, safety and welfare of employees in employments and places of employment and frequenters of places of employment...

(h) The department shall investigate, ascertain, declare, and prescribe what safety devices, safeguards or other means or methods of protection are best adapted to render the employees of every employment and place of employment and frequenters of every place of employment safe, and to protect their welfare as required by law or lawful orders.

(i) The department shall ascertain and fix such reasonable standards and shall prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employees in employments and places of employment or frequenters of places of employment.

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

Section 101.023, Stats., states that the commercial building code council shall review and make recommendations to the department pertaining to rules and any matter related to constructing, altering, adding to, repairing, and maintaining public buildings and buildings that are places of employment. Pursuant this section, the department consulted with the commercial building code council. No recommendations were made.

Section 101.053 (2), Stats. requires the Department to promulgate rules revising the commercial building code to create separate standards for the construction and inspection of recreational and educational camps that take into account the unique uses of such camps, including seasonal use.

Section 101.12 (1), Stats. states:

“Except for plans that are reviewed by the department of health services under ss. 50.02 (2) (b), 50.025, 50.36 (2), or 50.92 (3m), the department shall require the submission of essential drawings, calculations and specifications for public buildings, public structures and places of employment including the following components:

(a) Heating, ventilation, air conditioning and fire detection, prevention, or suppression systems.

(b) Industrial exhaust systems.

(c) Elevators, escalators, lifts, as defined in s. 167.33 (1) (f), and power dumbwaiters.

(d) Stadiums, grandstands, and bleachers.

(e) Amusement and thrill rides equipment.”

Section 101.12 (3m) (a), Stats. states that “[t]he department shall promulgate rules for the administration of a program to certify 2nd class cities to perform the examination of essential drawings, calculations and specifications in accordance with sub. (1).”

Section 101.12 (3m) (e), Stats. states that “[t]he department shall by rule set fees, to be collected by the 2nd class city and remitted to the department, to meet the department’s costs in enforcing and administering its duties under this paragraph.”

Section 101.82 (1), Stats. requires the electrical code standards promulgated by the Department to take into account the unique uses of recreational and educational camps, including seasonal use.

Section 145.02 (2) (b), Stats. requires the separate plumbing standards established for camping units in a fixed location in a campground to take into account the unique uses of recreational and educational camps, including seasonal use.

Section 227.11(2)(a), Stats. empowers the Department of Safety and Professional Services to promulgate rules interpreting the provision of any statute the Department enforces or administers.

Related statute or rule:

Section 101.053, Stats. defines Recreational and Educational Camps.

Plain language analysis:

The department, in conjunction with the Commercial Building Code Council and stakeholders, reviewed the existing code as it relates to standards for recreational and educational camps. The Wisconsin Commercial Building Code, SPS 361-366, contains standards for the design, construction, maintenance, use and inspection of commercial buildings, public buildings, and places of employment. The agency has determined making changes to the code in order to create separate standards for the construction and inspection, the installation, repair, and maintenance of electrical wiring, and plumbing standards for recreational and educational camps. These standards take into account uses, including seasonal use, that are unique to recreational and educational camps.

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

The federal government generally does not require plan review of commercial buildings or special standards for the construction of recreational and educational camps. Below are the portions of the code of federal regulations that relate to worker safety, energy

efficiency and accessibility requirements, which in some cases may require a declaration or assurance from the project designer that the project meets these requirements.

Commercial Buildings that Serve as Workplaces

29 CFR 1910 – Occupational Safety and Health Administration. This section sets requirements for safety in commercial buildings that serve as workplaces. Part 29 CFR 1926 contains safety requirements, installation requirements, and environmental considerations for special equipment necessary to safeguard employees working in special industries.

Energy Conservation Requirements

10 CFR 420 – State Energy Program. The purpose of this regulation is to promote the conservation of energy, reduce the rate of growth of energy demand, and reduce dependence on imported oil through the development and implementation of comprehensive state energy programs. This regulation initially required that each state's energy conservation rules for new buildings be no less stringent than the provisions of the 2004 edition of ASHRAE Standard 90.1, Energy Standard for Buildings Except Low-Rise Residential Buildings.

10 CFR 434 – Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings. The provisions of this part provide minimum standards for energy efficiency for the design of new Federal commercial and multi-family high rise residential buildings. The performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy. This rule is based on the ASHRAE/IESNA Standard 90.

10 CFR 435 – Energy Conservation Voluntary Performance Standards for New Buildings; Mandatory for Federal Buildings. This regulation establishes energy conservation voluntary performance standards for the design of new commercial and multi-family high rise residential buildings.

Accessibility Requirements

Both 28 CFR 35 and 28 CFR 36 require public buildings and commercial facilities, including government-owned and operated buildings, be designed, constructed and altered in compliance with the accessibility construction regulations specified under the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG).

The purpose of 24 CFR 40 and 24 CFR 41 is to provide technical guidance on the design and construction of dwelling units as required by the federal Fair Housing Amendments Act of 1988.

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:

N/A

Comparison with rules in adjacent states:

Illinois:

The State of Illinois defines youth camps as land used for recreational or instructional purposes, which is used for philanthropic or charitable patronage and that accommodates 5 or more children under 18 years of age for 3 or more consecutive days, or 5 days or more during the calendar year. The site may be equipped with temporary or permanent buildings. [210 ILCS 100 Section 3.01] Illinois law also requires a license for any person wants to establish, maintain, conduct, or operate a youth camp. [210 ILCS- 100 Section 5]

Additionally, Illinois defines recreational area as any area of land which is free of charge or is charged for recreational activities and do not include primitive areas surrounding woodlands, croplands, pasturelands, prairielands, wetlands, or water areas in which any recreation is allowed without revenue purposes. [210 ILCS 95 Section 2]

All plumbing in youth camps shall be in compliance with the Illinois Plumbing Code (77 Ill. Admin. Code 890) and shall provide a minimum of one water closet for each 20 persons [77 Ill. Admin. Code 810 Section 120] Electrical systems shall be designed, constructed, and maintained according to the National Fire Protection Association's National Electrical Code 1984 edition (NFPA 70-1984) [77 Ill. Admin. Code 810 Section 140] However, recreational area's electrical system constructed after July 1, 1990 shall comply with National Fire Protection Association's National Electrical Code 1990 edition (NFPA 70-1990) [77 Ill. Admin. Code 800 Section 1600]

Iowa:

The State of Iowa imposes a combination of state required codes and locally adopted codes. When municipalities update their codes, they are required to update to the codes adopted by the state. The Iowa Building Code Bureau adopts the IBC, IRC, IMC, IEBC and IECC. The State Fire Marshal adopts the IFC. The Iowa Plumbing and Mechanical Code Advisory Council is responsible for the adoption of the state plumbing code. The state adopted versions of IFC and IECC are required to be enforced for all occupancies statewide by state and local government enforcement agencies. Local jurisdictions have the option of adopting the remaining state adopted codes or a stricter code as determined by the jurisdiction. Consequently, many local jurisdictions have adopted the IPC. The Iowa Code with amendments is based on the 2015 editions of the International Codes, except for the IMC which is the 2021 edition and the IECC which is the 2012 edition. The state IFC and IECC are required for all construction.

The provisions of the National Electrical Code, 2020 edition, published by the National Fire Protection Association, are adopted as the requirements for all electrical installations [661 IAC 504.1 (103)], and the Uniform Plumbing Code, 2021 Edition, as published by the International Association of Plumbing and Mechanical Officials, are hereby adopted by reference with amendments as the state plumbing code authorized by Iowa Code [641 IAC 25.1 (105)]

No special rules have been adopted for youth, recreational, or educational camps.

Michigan:

The Bureau of Construction Codes (BCC) administers all related rules sets and codes to ensure compliance with the current standards. The bureau conducts plan reviews, issues permits, and provides inspections in the area of building, electrical, mechanical, public, health facilities, and mobile home parks.

Michigan applies the Stille-DeRossett-Hale Single State Construction Code Act, which consist of the international residential code, the international building code, the international mechanical code, the international plumbing code, the international existing building code, and the international energy conservation code published by the international code council and the national electrical code published by the national fire prevention association, with amendments, additions, or deletions as the director determines appropriate. [MI Act 230 of 1972]

Michigan defines children's camp as a residential, day, troop, or travel camp that provides care and supervision in a natural environment for more than 4 children and for 5 or more days within a 14-day period. [MI MCL 722.111 Act 116 of 1973]

On the other hand, residential camp is defined as a camp that provides care on a 24-hour basis at a regulated campsite, which means an outdoor setting that has natural or man-made features available for outdoor activities. [MI Admin. Code R 400.11101]

Camps electrical systems shall be in accordance with the provisions of the Michigan electrical code [MI Admin. Code R 400.11221]

Minnesota:

The adopting authority for the Minnesota State Building Code the Minnesota Department of Labor and Industry (DLI), Construction Codes & Licensing Division (CCLD). Jurisdictions that adopt building codes must adopt the Minnesota State Building Code or remain at their present level.

The state commissioner of health is authorized to adopt and enforce such reasonable rules and standards as the commissioner determines necessary to protect the health and safety of persons in attendance at youth camps. Such rules and standards may include reasonable restrictions and limitations on the following:

(1) camp sites and buildings, including location, layout, lighting, ventilation, heating, plumbing, drainage and sleeping quarters;

(2) sanitary facilities, including water supply, toilet and shower facilities, sewage and excreta disposal, waste and garbage disposal, and the control of insects and rodents; and

(3) food service, including storage, refrigeration, sanitary preparation and handling of food, the cleanliness of kitchens and the proper functioning of equipment. [MN Stats. 144.74]

Minnesota defines youth camp as land with permanent buildings, tents, or other structures, which are established and maintained as living quarters and where food and beverage is provided for 10 or more people, and also operate continuously for 5 days or more each year with education, recreational, or vocational purposes for minors to use free of charge or for payment of a fee. This definition does not include cabin and trailer camps, fishing and hunting camps, resorts, penal and correctional camps, industrial and construction camps, nor does it include homes operated for care or treatment of children and for the operation of which a license is required under the provisions of chapter 257. [MN Stats 144.71 Subd. 2 and 3.]

Per Minnesota law, a license to operate a youth camp is required and shall be issued by the state commissioner of health. [MN Stats 144.72]

All new plumbing shall be installed according to the rules of the commissioner of health and the provisions of chapter 4714, the Minnesota Plumbing Code as adopted by the commissioner of health. Alterations to existing plumbing, when undertaken, shall conform to the provisions of the Minnesota Plumbing Code. [MN Admin. Code 4630.3300]

Summary of factual data and analytical methodologies:

The agency's Division of Industry Services consulted with stakeholders and the Department of Agriculture Trade and Consumer Protection to identify areas of the code that could be changed to meet the mandates in 2019 Act 130 while also preserving public safety and welfare.

The agency also consulted with the Commercial Building Code Council to develop rules implementing 2019 Wisconsin Act 130 relating to recreational and educational camps.

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

The Department believes that the proposed changes will have little or no adverse economic impact. The proposed rule was posted on the Department of Safety and

Professional Services’ website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis 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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Sofia Anderson, Administrative Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Sofia Anderson, Administrative Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before November 8, 2022, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 361.04 (15) and (15g) are created to read:

SPS 361.04 (15) “Recreational and Educational Camp” has the meaning given in s. 101.053, Stats.

(15g) “Seasonal Recreational and Educational Camp Building” means a building or structure occupied only between the dates of May 1st and October 15th and located at a Recreational and Educational Camp.

SECTION 2. SPS 362.1207 is created to read:

SPS 362.1207 Sound Transmission. This is a department exception to the requirement in IBC section 1207.1: The requirements in IBC section 1207 do not apply to sleeping units in buildings at seasonal recreational and educational camps.

SECTION 3. SPS 362.2902 (5m) is created to read:

SPS 362.2902 (5m) LOCATION OF TOILET FACILITIES. Substitute the following wording for the exception in IBC section 2902.3.2: The location and maximum travel distance to required employee facilities in factory and industrial occupancies and to required employee and patron or camper facilities serving seasonal recreational and educational camp buildings are permitted to exceed that required by this section, provided that the location and maximum distance of travel are approved.

SECTION 4. SPS 362.3102 is repealed and recreated to read:

SPS 362.3102 Membrane structures and blower equipment

(1) TEMPORARY STRUCTURES. This is a department exception to the requirements in IBC section 3102.1: Membrane structures that are seasonal recreational and educational camp buildings erected on balconies, decks, or other permanent raised platforms no more than 36” above grade at any point shall comply with the *International Fire Code*.

(2) BLOWER EQUIPMENT. Substitute the following wording for requirement 2 in IBC section 3102.8.1.2: Blowers shall be provided with inlet screens, belt guards and other protective devices as required to provide protection from injury.

SECTION 5. 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
Department of Safety and Professional Services