

443 Lafayette Road N.
St. Paul, Minnesota 55155
www.doli.state.mn.us



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

(651) 284-5005
1-800-DIAL-DLI
TTY: (651) 297-4198

November 14, 2008

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed New Rules Governing Window Fall Prevention Devices, Minnesota Rules, Parts 1303.2300 to 1303.2330, and Amendment to Minnesota Rules, Part 1305.1405; Governor's Tracking No. AR 362

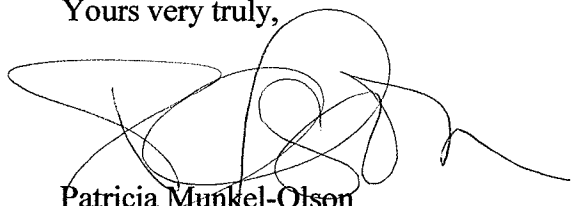
Dear Librarian:

The Minnesota Department of Labor and Industry intends to adopt new rules for window fall prevention devices to be included in the Minnesota State Building Code. These rules are proposed in response to Minn. Stat. §16B.61, subd. 3c (Supp. 2007). We plan to publish a Notice of Intent to Adopt Rules Without a Public Hearing in the November 24, 2008 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 a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at (651) 284-5128.

Yours very truly,



Patricia Munkel-Olson
Construction Codes and Licensing Attorney

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Labor and Industry

Construction Code and Licensing Division

STATEMENT OF NEED AND REASONABLENESS

Proposed New Rules Governing Window Fall Prevention Devices, [Proposed] Minnesota Rules, Parts 1303.2300 to 1303.2330, and Amendment to Minn. Rules, Part 1305.1405.

INTRODUCTION

In 2007, the Legislature passed a law directing the Commissioner of Labor and Industry to adopt rules for window fall prevention devices to be included in the Minnesota State Building Code.¹ These rules are proposed in response to this new law.

The requirement for window fall prevention devices was deleted by the Department from the 2006 International Residential Code in a previous rulemaking because accidents related to window falls involving local children was an issue being addressed by the legislature at the time this rule was being reviewed by the Office of Administrative Hearings. The requirement for window fall prevention devices is proposed for deletion from the 2006 International Building Code with this rulemaking. At the time that the 2006 International Building Code was being reviewed by the Office of Administrative Hearings, the need for improved window fall prevention was not an issue before the legislature. The 2006 International Residential Code and the 2006 International Building Code do not appropriately regulate window fall prevention device requirements in the manner required by the legislation. To that end, the most appropriate solution to properly coordinate the requirements of the legislation is to provide the requirements in Minnesota Rules, chapter 1303, pursuant to part 1303.1100, and delete the related requirements from the 2006 International Building Code.

As background, the Minnesota State Building Code incorporates the International Residential Code (IRC) and the International Building Code (IBC) by reference and as amended through rulemaking.² The latest amendments to these administrative rules became effective in July 2007.

The intent of the legislation is to prevent children from falling through windows, which could result in severe injury or death, by requiring the use of window fall prevention devices that comply with the standards for window fall prevention devices developed by ASTM International. The legislature provided key directives for window fall prevention. The directives are as follows:

- Window fall prevention devices include, but are not limited to, safety screens, hardware,

¹ Minn. Stat. § 16B.61, subd. 3c (Supp. 2007).

² See Minn. R. Ch. 1305 (Adoption of the IBC) and 1309 (IRC); The 2006 International Codes were incorporated with amendments to address Minnesota's climatic conditions, to coordinate with and complement the other administrative rule chapters that comprise the Minnesota State Building Code, and to be in compliance with other applicable statutes and rules. The international codes are commonly referred to as model documents.

guards, and other devices that comply with the standards established by the Commissioner;

- The rules shall require compliance with standards for window fall prevention devices developed by ASTM International, contained in the IBC, as the model language with any amendments deemed necessary to coordinate with the other adopted building codes in Minnesota;
- The rules shall establish a scope that includes the applicable building occupancies, and the types, locations, and sizes of windows that require the installation of fall devices;
- The rules are required to be effective July 1, 2009; and
- The Commissioner was required to report to the Legislature on the status of the rulemaking on or before February 15, 2008.³

In fall 2007, the Division created an advisory committee comprised of 12 members representing builders groups and other construction professionals, window manufacturers, housing and safety groups, and representatives from several state agencies.⁴ A number of the members serving on the advisory committee were also members of the national ASTM F15 Window Fall Prevention Standards Committee, which develops window fall prevention standards on the national level. The Division's advisory committee discussed its role and responsibilities, the types of window fall prevention devices that were currently available, and mandatory and voluntary prevention programs that exist around the nation. Following its discussions, the advisory committee drafted the proposed rules in order to assist the Department in its compliance with Minn. Stat. § 16B.61.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Carrie Rohling at the Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, e-mail at dli.rules@state.mn.us, telephone (651) 284-5006, or fax (651) 284-5725. TTY users may call (651) 297-4198.

STATUTORY AUTHORITY

The Department's statutory authority to adopt the rules is set forth in Minnesota Statutes, sections 16B.59, 16B.61, 16B.64, and 326B.02.

Minnesota Statutes, section 16B.59, states in pertinent part:

The State Building Code governs the construction, reconstruction,

³ The Commissioner reported to the chairpersons of the house and senate committees with jurisdiction over health and human services about the status of the window fall prevention rulemaking on February 12, 2008.

⁴ Exhibit A.

alteration, and repair 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.

Minnesota Statutes, section 16B.61, subdivision 1, states in pertinent part:

[T]he commissioner shall by rule establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety, including design and construction standards regarding heat loss control, illumination, and climate control ... The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States ... 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 16B.59 to 16B.75, the commissioner shall administer and enforce the provisions of those sections

....

Minnesota Statutes, section 16B.64, subdivision 6, states, "The commissioner shall approve any proposed amendments deemed by the commissioner to be reasonable in conformity with the policy and purpose of the code and justified under the particular circumstances involved...."

These sources of statutory authority were adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125, does not apply. *See* Minnesota Laws 1995, chapter 233, article 2, section 58.

Minnesota Statutes, section 326B.02, subdivision 5, states, "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..." In other rulemakings and in accordance with Minn. Stat. § 14.125 the Department has published notices of intent to adopt rules citing to this general rulemaking authority within

18 months of the date Minn. Stat. § 326B.02 became effective.⁵

The Department's statutory authority to adopt rules specifically about window fall prevention devices became effective on August 1, 2007, and is set forth in Minnesota Statutes § 16B.61, subdivision 3c, which provides in part:

The commissioner of labor and industry shall adopt rules for window fall prevention devices as part of the State Building Code. Window fall prevention devices include, but are not limited to, safety screens, hardware, guards, and other devices that comply with the standards established by the commissioner of labor and industry. The rules shall require compliance with standards for window fall prevention devices developed by ASTM International, contained in the International Building Code as the model language with amendments deemed necessary to coordinate with the other adopted building codes in Minnesota. The rules shall establish a scope that includes the applicable building occupancies, and the types, locations, and sizes of windows that will require the installation of fall devices. The rules will be effective July 1, 2009...

Pursuant to Minnesota Statutes, section 14.125, the Department published a notice of intent to adopt rules within 18 months of the effective date of Minn. Stat. § 16B.61, subd. 3c (the laws authorizing or requiring rules to be adopted). Because the Department's notice of intent to adopt rules published within 18 months of the effective date of the law, the rulemaking authority has not expired.

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

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below restate 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:

The classes of persons who will probably be affected by the proposed rule include Building Officials, builders, owners and occupants of apartment houses, hotels, and motels, and architects, professional engineers, and fire service personnel.

Those that will bear the costs of the proposed rule initially include the building owners, which are likely to be passed onto the occupants of apartment houses, hotels, and motels.

⁵ The Department has published two notices of intent to adopt rules in the State Register that cite to this general rulemaking authority. See 33 SR 5 (July 7, 2007) and 33 SR 250 (August 4, 2007).

Those that will benefit from the proposed rule include the building owners and occupants of apartment houses, hotels, and motels.

(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 to implement and enforce the proposed rule, if any, will be negligible. The Department will need to provide education about the new rules; However, the Division already conducts building code education for those that administer and enforce the Minnesota State Building Code as a normal part of its business practices. The new rules would be folded into existing education programs, and would not create new costs in providing this education.

There will be no costs to any other agency for the implementation and enforcement of the proposed rule because the proposed rule does not require any other agencies to do anything to implement or enforce this rule. The probable costs of complying with the proposed rule that will be borne by local jurisdictions is described in item five of this section.

There will be no effect on state revenues for the implementation and enforcement of the proposed rules.

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

There are no less costly or intrusive methods for achieving the purpose of the proposed rules because the Legislature has taken action to mandate that rules requiring compliance with the ASTM International standards for window fall prevention devices be adopted into the State Building Code.

(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:

The Department did not consider any alternative methods to achieve the purpose of the proposed rules because the Legislature specifically identified the ASTM International standards as the standard it wanted adopted as part of the State Building Code. As a result, the Department was not able to consider the incorporation of any other standard.

(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 probable costs of complying with the proposed rule are the direct result of Minn. Stat. 16B.61, subd. 3c, which requires the adoption of the ASTM International standards addressing window fall prevention devices. The proposed rules do not, in themselves, result in costs related to

compliance with the proposed rules.

Having said that, the probable costs associated with compliance with the statutorily identified standard pertaining to the installation of a window fall prevention devices are likely to vary based on the type of device and the method of installation. At the time of writing of this SONAR, the Department's research indicates that guard devices are anticipated to cost between \$24.00 and \$105.00. In a price list provided to the Department from John Sterling Corporation, the highest-priced window guard (a seven bar, heavy duty device) has a list price of \$102.89. According to the current language in the ASTM F 2090, the only devices addressed are window guards. The types of approved devices available and costs of the devices may change because the ASTM F 2090 is currently being revised. As a result of the revision, the types of approved devices may be expanded and the costs of those devices may change accordingly.

The probable costs of complying with the proposed rule that will be borne by local municipalities will be nominal, if any. Currently, permits must be obtained for new construction projects involving windows and for window replacement projects. This proposed rule applies to both windows in new construction and to those being replaced. As a result, no additional permits will be required to comply with the new requirements. The costs associated with the inspection process related to the installation of window fall prevention devices will be covered by the permits currently being obtained for these projects. The inspection will require the inspector to confirm that the device is installed properly, however, additional time to inspect the device during his routine inspections will be minimal. The municipality may incur a minimal cost to revise inspection forms and permits, if necessary. Any education required to inform inspectors and building officials of this new requirement will be folded into education programs already provided by the Department, so the municipality will not spend any additional funds to obtain education relative to the proposed rule.

(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:

In accordance with the Legislative directive, the proposed rules specifically identify the building occupancies, and the types, locations, and sizes of windows that require the installation of window fall prevention devices. In drafting the proposed rules, the advisory committee considered the types of occupancies that tend to house small children—the group the Legislature intends to protect. The proposed rules do not include certain occupancy groups that it determined should not require the installation of a window fall prevention device because it is unlikely that they will house small children i.e. convents, dormitories, fraternities and sororities, monasteries, and vacation timeshare properties. Likewise, the proposed rules provide exceptions related to the types, locations, and sizes of windows i.e. fixed, non-operable windows, windows located in basements, windows located below the first story above grade plane, operable windows in which the opening of the window in any position does not permit a four-inch diameter sphere to pass through the opening, and windows in which the bottom of the sill is more than 42 inches above the finished floor.

The Division anticipates that the specificity of the proposed rules will result in a savings to the owners and occupants of the types of structures that do not fall within the occupancies identified in proposed rule 1303.2310, or where the type, location, or size of window has been specifically excepted from compliance.

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

The Division is not aware of any federal regulations regarding window fall protection devices.

PERFORMANCE-BASED RULES

The Department believes that by establishing a minimum standard regarding the installation of window fall prevention devices and by identifying the appropriate occupant use groups that must comply with the standard, it is providing a consistent requirement for all affected use groups, and a life safety standard to uniformly protect occupants of those use groups. ASTM International is currently expanding their standard provisions to acknowledge other window fall protection devices that are available. The anticipated changes to the standard are likely to provide alternatives to those occupancy groups that must comply with the requirements. A national committee, described in the Introduction Section, continues to explore window fall protection devices and the occupancies that are most impacted by the issue.

ADDITIONAL NOTICE

We will mail or email the proposed rules, the Notice of Intent to Adopt Rules Without a Hearing, and this Statement of Need and Reasonableness to interested parties. These parties include:

1. The Window Fall Prevention Advisory Committee and Interested Persons;
2. Minnesota Multi-Housing Association;
3. Fire Marshal Association of Minnesota; and
4. Minnesota State Fire Marshal Division.

We will also post the proposed rules, the Notice of Intent to Adopt Rules Without a Hearing, and this Statement of Need and Reasonableness on the Department's rulemaking web page located at http://www.doli.state.mn.us/rulemaking_activity.html.

Our Notice Plan also includes giving notice required by statute. We will mail the Notice of Intent to Adopt Rules Without a Hearing to everyone who has registered to be on the Department's rulemaking mailing lists pertaining generally to all agency rulemakings and all rulemakings specifically related to the construction codes and the IBC, which are maintained pursuant to Minnesota Statutes, section 14.14, subdivision 1a.

We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. We did this by sending Ryan Baumtrog, Executive Budget Officer at the Department of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. We sent the copies on October 24, 2008. The documents included: the Governor's Office Proposed Rule and SONAR Form; draft rules, dated 10/17/08; and almost final SONAR. Mr. Baumtrog sent a memorandum dated October 27, 2008, which included the following comments:

On behalf of the Commissioner of Finance, I have reviewed the proposed rule and related Statement of Need and Reasonableness to explore the potential impact these changes may have on local governments.

Permits for new construction projects involving windows and for window replacement projects are already required; therefore, local governments do not need additional permits in order to comply with the new requirements. Only minimal cost to local governments may occur to revise inspection forms and permits. According to the SONAR, any costs associated with the device and installation fees would be passed on to the occupants of the buildings by building owners. Education about the new rules can occur with educational programs already provided by the Department of Labor and Industry. Furthermore, there is no significant cost or time increase associated with the inspection process.

In my opinion, the proposed changes will not impose a significant cost on local governments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. First, these rules do not require any building or remodeling to occur. Also, a consideration of the probable costs, as described in item five of the regulatory analysis section of this SONAR, indicate that the costs associated with the device and installation fees, if any, would be passed on to the occupants of the buildings by building owners.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having staff from the Construction Codes and Licensing Division testify in support of the need for and reasonableness

of the rules.

RULE-BY-RULE ANALYSIS

1303.2300 SCOPE.

A scoping section is provided in the proposed rule to clearly identify the rules that govern the requirements, methods, and devices used to provide window fall prevention devices.

1303.2305 DEFINITIONS.

Subpart 1. Scope. This subpart specifies that the definitions apply to the proposed rules.

Subp. 2. ASTM F 2006. This subpart clearly identifies the full name of the ASTM F 2006 standard.

Subp. 3. ASTM F 2090. This subpart clearly identifies the full name of the ASTM F 2090 standard.

1303.2310 OCCUPANCIES.

The authorizing legislation requires that the proposed rules identify the occupancies that must comply with the window fall prevention device rules. The Department identified the occupancies specified in the IBC where children are most likely to be housed. The occupancy use groups listed in the proposed rule are those occupancies.

1303.2320 WINDOW FALL PREVENTION REQUIRED.

Minn. Stat. § 16B.61, subd. 3c, requires that the proposed rule identify the types of windows that are affected. The advisory committee researched other fall prevention programs, and recommended that the types of windows identified in proposed rule part 1303.2310 are the types of windows most commonly associated with window fall instances.

Exceptions. The advisory committee also recommended that certain types of windows should be specifically excepted from compliance with this rule part. The first three exceptions include fixed, non-operable windows; windows located in basements; and windows located in the first story above grade plane. These three types of windows are not required to comply because they pose no potential fall safety hazards to occupants by the nature of the window type (non-operable) or the window location relative to the grade plane (basement and in the first story). The fourth exception permits windows to be used that are designed to limit a 4-inch sphere from passing through the window opening, which is consistent with the guard opening requirements of Minn. R. Chapters 1305 and 1309.

The fifth exception establishes that windows with a bottom clear opening height of more

than 42 inches are exempt from the window fall prevention device requirements. The advisory committee discussed several common sill height dimensions such as 24 inches, 36 inches, 42 inches, and 44 inches. Each of these dimensions represents a threshold currently incorporated in the model codes. A 24-inch bottom clear window opening represents the dimension in 2006 IRC Section R613.2 and 2006 IBC Section 1405.12.2.

The advisory committee recommended that a bottom clear opening dimension of more than 42 inches is appropriate because this dimension is consistent with the minimum guard height required by Minn. R. part 1305.1013. The committee concluded that the 42-inch bottom clear opening height established by the model codes as a maximum permitted height for most occupants was also a reasonable height requirement for the installation of window fall prevention devices, which target safety of Minnesota's children.

1303.2330 BUILDING ADDITIONS; ADDITION OR REPLACEMENT OF WINDOWS.

This rule part requires windows in additions and new or replacement windows in the applicable occupancies to comply with window fall prevention requirements. This rule part is intended to ensure that window fall prevention devices are provided for windows in existing structures that are undergoing window replacement or the construction of a new addition containing windows. Window fall prevention compliance will be accomplished through the building permit process for additions and window replacements pursuant to Minnesota Rules, part 1300.0120.

1305.1405 SECTION 1405, INSTALLATION OF WALL COVERINGS.

This new subpart deletes Section 1405.12.2 from the 2006 IBC, which was adopted without amendment through an incorporation by reference. Section 1405.12.2 would require the installation of window fall prevention devices into any new or remodeled R-2 and R-3 occupancies that are built using the IBC. As discussed earlier, the Department has determined that certain occupancies that are within the R-2 and R-3 occupancies should not require the installation of window fall prevention devices because they are unlikely to house small children. The deletion of this section from the IBC removes any potential confusion regarding which R-2 and R-3 occupancies will require window fall prevention devices.

EFFECTIVE DATE. The proposed rule specifically identifies July 1, 2009 as the effective date for the proposed rules because the authorizing statute specifies that date.

Effective August 1, 2007, Minnesota Statutes § 16B.61, subd. 3c, requires the adoption of window fall prevention device rules and clearly states, "The rules will be effective July 1, 2009."

Effective December 1, 2007, Minnesota Statutes § 16B.64, subd. 8, states:

A rule to adopt or amend the state's building code is effective 180 days after the filing of the rule with the secretary of state under section 14.16 or 14.26. The rule may provide for a different effective date if the commissioner or board proposing

the rule finds that a different effective date is necessary to protect public health and safety after considering, among other things, the need for time for training of individuals to comply with and enforce the rule.⁶

In specifying a July 1, 2009 effective date, consideration was given to the Legislature's provision of a specific date and whether an effective date that is different from one that would occur 180 days after submission of the rules to the Secretary of State is necessary to protect public health and safety. It was determined that a definitive and specific effective date of July 1, 2009 is necessary to protect public health and safety because it will permit manufacturers, builders, building owners, and occupants to become familiar with and comply with the rules. Further, adhering to the statutorily dictated effective date is likely to eliminate confusion about when these rules would become effective, which also protects public health and safety because it provides certainty as to when compliance is required.

CONCLUSION

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

Oct. 30 2008
Date

Steve Sviggum
Steve Sviggum
Commissioner

⁶ 2007 Minn. Laws, Chapter 140, Article 4, Section 11.

**Window Fall Prevention Advisory Committee
Membership List**

1. Richard Lockrem, Chair
CCLD, MN Department of Labor and Industry
2. Rick Davidson
Association of Minnesota Building Officials (City of Maple Grove)
3. Karen Linner
Builders Association of Minnesota
4. Susan Gerberich
University of Minnesota
5. Mark Ryan
American Institute of Architects—MN (J. Buxell Architects)
6. Michael Fisher
Window & Door Manufacturers' Association (The Kellen Co.)
7. Mark Mikkelson
Andersen Windows
8. Glen Bergstrand
MN State Fire Marshal Division
9. James Graham
American Indian Community Development Corporation
10. Douglas Benson
MN Department of Health, Env. Health Div.
11. Jack Horner
MN Multi-Housing Association
12. Erin Petersen
MN Safety Council