

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed
Adoption of Amendments to
Chapter 1340 of the Minnesota
State Building Code.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Allan Klein on June 30, 1995, at 1:00 p.m. at the Sheraton Midway Hotel, 400 Hamline Avenue North, St. Paul, Minnesota. The hearing was recessed until 7:00 p.m. that evening, when the hearing was reconvened by Administrative Law Judge Allen Giles.

This report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Department of Administration (Department) has fulfilled all relevant substantive and procedural requirements of law or rule, to determine whether the proposed rules are needed and reasonable, and whether or not the rules, if modified, are substantially different from those originally proposed.

Amy Kvalseth, Assistant Attorney General, appeared on behalf of the Department at the hearing. The agency panel appearing in support of the proposed rules consisted of Curt Wiehle of the Disability Council, and Tom Joachim, Scott McLellan and Fred Driver of the Building Codes and Standards Division for the Department.

Approximately thirty persons attended the afternoon hearing. Twenty eight persons signed the hearing register. The Administrative Law Judge received seven exhibits as evidence during the hearing. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules. There were no members of the public in attendance when the hearing was reconvened in the evening.

The record remained open for the submission of written comments for twenty calendar days following the date of the hearing or July 20, 1995. Pursuant to Minn. Stat. § 14.15, subd. 1 five business days were allowed for the filing of responsive comments. On July 27, 1995, the rulemaking record closed for all purposes.

Beyond the oral comments at the hearing, the Administrative Law Judge received 16 post-hearing written comments from interested persons. The Department submitted a written comment responding to matters discussed at the hearing. Two written

comments were received after the comment period closed and were only considered as reply comments.

The Department must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

When the Department files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On May 9, 1995, the Department filed the following documents with the Office of Administrative Hearings:

- (a) Copy of the proposed rules for State Building Code Chapter 1340.
- (b) Order for Hearing.
- (c) Notice of Hearing.
- (d) Statement of Need and Reasonableness for Chapter 1340.
- (e) The names of Commission personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Department to appear on its behalf.

2. On May 22, 1995, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

3. On May 30, 1995, a Notice of Hearing and a copy of the proposed rules were published at 19 State Register Number 48.

4. On June 1, 1995, the Department filed the following documents with the Administrative Law Judge:

- (a) the Notice of Solicitation of comments on the rule together with all comments received in response to that Notice;
- (b) the Order for Hearing as issued;
- (c) the Notice of Hearing as published in the State Register and mailed to interested persons;
- (d) the Statement of Need and Reasonableness (SONAR);
- (e) Certification that the Department's mailing list is accurate and complete;

- (f) an affidavit of mailing the Notice of Hearing to those persons whose names appear on the Department's mailing list and to those persons to whom the Department gave discretionary notice;
- (g) an affidavit of mailing the SONAR to the Legislative Commission to Review Agency Rules (LCRAR); and
- (h) a photocopy of those pages of the State Register in which the Notice of Hearing and the proposed rules appear.

All documents filed in this matter were available for inspection and copying at the Office of Administrative Hearings from the date of filing.

Nature of the Proposed Rules.

5. The proposed rules repeal the existing code governing standards for Facilities for the Handicapped at Chapter 1340 of the State Building Code, and put in its place all new material, along with an incorporation by reference of both a model building code and national standard. The proposed rules include Chapters 11 and Divisions I and II of Appendix Chapter 11 of the *1994 Uniform Building Code* as promulgated by the International Conference of Building Officials (ICBO). Also, *CABO/ANSI A117.1 - 1992* is the national standard being adopted by reference in its entirety in section 1101.2 of the *1994 Uniform Building Code* (UBC). The proposed rules also contain amendments to the referenced chapters of the 1994 UBC and CABO/ANSI A117.1. The proposed rule contains some of the language Chapter 11 of the UBC. When either the UBC's provisions or the CABO/ANSI technical standards do not adequately satisfy either the ADA, FFHA or the ADAAG, rule parts have been established to align the proposed rule with the ADA, FFHA or the ADAAG. Changes have also been made on the basis of need to meet particular Minnesota requirements.

Statutory Authority.

6. In its Statement of Need and Reasonableness (SONAR), the Department cites Minn. Stat. § 16B.61 as authorizing the Department to adopt the proposed rules. This statute requires the Department to promulgate rules establishing a code "for the construction, reconstruction, alteration, and repair of state-owned buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety." Minn. Stat. § 16B.61. In establishing this code, conformity insofar as practicable will be given to "model building codes generally accepted and in use through out the United States." *Id.* The Department has general statutory authority to adopt these rules.

Small Business Considerations in Rulemaking.

7. Minn. Stat. § 14.115, subd. 2 (1992) requires state agencies proposing rules affecting small businesses to consider methods for reducing adverse impact on those businesses. In the SONAR, the Department stated that the effect of the proposed rules

on small business was evaluated. The Department acknowledges that the proposed rule amendments may have some affect on small business in Minnesota. The rules contain no scheduling, deadline, or reporting requirements. The need for the rules focuses on the intent to consolidate and simplify compliance between the accessibility provisions contained in the Federal government's Americans With Disabilities Act (ADA) and the Federal Fair Housing Amendment Act (FFHA). Exempting small businesses from the proposed rule is inappropriate since the rules are intended to be performance based for all users; not just for small businesses. The Department has concluded that the rules cannot be made less rigorous when applied to small businesses. The Department has met the requirements of Minn. Stat. § 14.115, subd. 2, with respect to the impact of the proposed rules on small businesses.

Fiscal Note.

8. Minn. Stat. § 14.11, subd. 1, requires proposers of rules requiring the expenditure of public funds in excess of \$100,000 per year by local public bodies to publish an estimate of the total cost to local public bodies for a two-year period. Gaius Nelson asserted that just the requirement for maneuvering clearance of 12 inches on the latch side and 48 inches perpendicular to the door in doorways would add a cost of \$50.00 per square foot of corridor in jails, auditoriums, and other public buildings, resulting in an additional cost to local public bodies of more than \$100,000 with the construction of "only 2,000 linear feet of corridor." Nelson Letter, at 3. The calculation is based on several assumptions. The first assumption is that a requirement for 12 inches clearance on the latch side translates into a cost in reduced square footage for the entire corridor that would not be otherwise be incurred. That assumption is not supported by any evidence in the record. The second assumption is that the fair market value of square footage in public buildings can be ascertained by importing a figure from the market for building space. The "conservative" figure of \$50.00 per square foot is not supported by any evidence. The third assumption is that adopting these rules will create costs that must be paid over the first two years of this rule. There is no evidence as to the amount of renovation (which would require compliance with the State Code) or new construction that would be affected by the proposed rule. There is no evidence that the proposed rules will require the expenditure of more than \$100,000 per year by local public bodies for the first two years of the rule. The Department is not required to prepare a fiscal note in this matter.

Impact on Agricultural Land.

9. Minn. Stat. § 14.11, subd. 2, requires proposers of rules that have a "direct and substantial adverse impact on agricultural land in this state" to comply with additional statutory requirements. These rules have no impact on agricultural land and, therefore, the additional statutory provisions do not apply.

Standards of Need and Reasonableness

10. Minn. Stat. § 14.50 (1992) requires the Administrative Judge to determine if the Department has demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts. The reasonableness of a rule focuses on whether it has a rational basis; a rule being reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985); Blocher Outdoor Advertising Co. v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn. App. 1984). The Department's burden is to "explain on what evidence it is relying and how the evidence connects rationally with the Agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). It is not the role of the Administrative Law Judge to determine which alternative presents the "best" approach and require the Department to adopt it. The Administrative Law Judge's role is to determine whether or not the alternative which the Department has selected has been demonstrated to be reasonable.

Proposed Rule 1340.0100 -- Adoption of Uniform Building Code Chapter 11 and Appendix Chapter 11 Division I and II by Reference..

11. Proposed rule 1340.0100 adopts by reference Chapter 11 and Appendix 11, Division I and II of the 1994 UBC as promulgated by the ICBO. This adoption by reference is specifically authorized by Minn. Stat. § 16B.61 subd. 1. The statute requires that the code so adopted be "based on the application of scientific principles, approved tests and professional judgment." Minn. Stat. § 16B.61 subd. 1. The Uniform Building Code meets these requirements. The Department has stated that the Uniform Building Code is not subject to frequent change. SONAR at 3.

James P. Loveland, P.E., Program Manager of the Engineering Services Section of the Minnesota Department of Health (MDOH) suggested that the State Building Code be amended to acknowledge that there can be exceptions to the Uniform Building Code for health care facilities and nursing homes. MDOH expressed concern that the cost of making 100 percent of toileting rooms in nursing homes accessible was unreasonable. The commentator indicated that many nursing home residents do not require that degree of accessibility. The Department agreed with the commentator's reasoning and indicated that Section 104.2.8 of the Uniform Building Code (UBC) provides for "alternate materials and methods of construction." Waivers are also available. The incorporation by reference of this proposed rule is needed, reasonable and specifically authorized by statute.

Proposed Rule 1340.1102 -- Definitions.

12. Proposed rule 1340.1102 sets out definitions for terms used in the rule. Julee Quarve Peterson, of JPQ, Inc., requested that the definition of "public buildings" be deleted from the rule to avoid confusion over what is meant by the term. The proposed rule part defines the term "public building" to mean a building and its grounds

the cost of which is paid for by the state or local government or any department, agency, special purpose district, or other instrumentality of the state or local government. This definition is taken from Title II, Subtitle A of the Americans with Disabilities Act. Having a definition is more likely to eliminate confusion than omitting that definition. The proposed rule part establishes a uniform definition and is needed and reasonable.

Proposed Rule 1340.1103 Subpart 1. UBC Section 1103.1.1 -- Building Accessibility General.

13. Proposed rule 1340.1103, subpart 1, establishes accessibility by ramp or elevator for all levels of a floor located on an accessible route. The proposed rule presently exists as Minnesota Rule part 1340.0300 Subpart 3. The proposed rule deletes an exception in the existing rule that allowed building officials to make a determination that work in an area could not be performed by persons with a severe impairment and thereby exempt the area from having specific accessibility features. The Department indicated that this is a subjective determination currently being performed by building officials who are not trained to make this determination. The deletion avoids conflicts between building officials and the proper authorities to determine what work can be performed by a person with disabilities. Proposed subpart 1 is needed and reasonable.

Proposed Rule 1340.1103 Subpart 2. UBC Section 1103.1.2.7(3) -- Building Accessibility.

14. Proposed subpart 2 mandates all patient rooms that do not meet accessibility standards in nursing homes and long-term care facilities be adaptable to meet those standards and located on an accessible route. The Department indicated in its SONAR that this rule was intended to provide more accessibility to the populations in those facilities and was based on the high probability that those populations would require that accessibility. SONAR, at 5. MDOH's comment regarding 100 percent of toilet rooms being accessible related to this rule part. Gail Manning, R.A., Plan Examiner for City of Minneapolis Inspections Division (City of Minneapolis) suggested that this provision was excessive. In response to the submitted written comments and testimony at the hearing, the Department has proposed to delete rule part 1340.1103 Subpart 2. The deletion leaves intact the present requirement that at least one in every two patient rooms be adaptable. The "one in every two" standard is adequate to meet the needs of nursing home and long-term care facility populations. The deletion of the requirement that all nonaccessible patient rooms be made adaptable does not constitute a substantial change.

Proposed Rule 1340.1103 Subpart 3. UBC Section 1103.1.2.9.1 -- General.

15. Proposed rule 1340.1103 Subpart 3 mandates that Group R Occupancies be accessible "or adaptable." The proposed rule meets the adaptability requirements of Section 100.205 of the Federal Fair Housing Act. The proposed rule also assures that

all public use and common use areas are covered by this section of the FFHA. Proposed rule 1340.1103 Subpart 3 is needed and reasonable.

Proposed Rule 1340.1103 Subpart 4. UBC Section 1103.1.2.9.2 -- Apartment Houses and Residential Condominium Developments.

16. Proposed subpart 4 establishes a requirement that a certain number of units of apartment houses and residential condominium developments be both accessible and adaptable. The proposed rule complies with the requirements of Section 100.205 of the FFHA. The proposed rule incorporates language from present Minnesota Rule part 1340.0400. At the hearing, the Department proposed a change to the proposed rule. The subpart as proposed rule stated "Accessible dwelling units shall comply with CABO/ANSI A117.1 Sections 4.3.3, 4.13.5," The proposed change alters the reference from 4.13.5 to 4.13, which would incorporate the entire section on doors which would include hardware, opening force, clearances, etc. The new language is more complete than the rule as originally proposed. This amendment does not constitute a substantial change. The proposed rule is needed and reasonable.

17. The Minnesota Commission Serving Deaf & Hard of Hearing People (MCSDHHP) suggested adding a provision to the building code to address apartment building security systems which currently rely upon hearing and voice modes which cannot be used by deaf tenants. In its posthearing comment, the Department acknowledged the merit of the suggestion and indicated that the Department will explore the possibility of adding such a provision in a later rulemaking proceeding. Such a change would involve a new subject about which comment by interested persons would be anticipated. As such, adding such language now would constitute a substantial change.

Proposed Rule 1340.1103 Subpart 8. UBC Section 1103.2.4.1 International Symbol of Accessibility.

18. The proposed rule part incorporates both the requirements of Minn. Stat. § 16B.61 subd. 5(b), for international accessibility signage, and Minn. Stat. § 169.346 Subd. 2 (a). This rule part complies with Section 4.1.2(5) of the ADAAG. JPQ, Inc., suggested room identification be used for signage, not merely room numbers. In response to these comments, the Department modified the rule to refer to signage of all permanent room identification rather than only room numbers. This modification does not constitute a substantial change. Proposed rule part 1340.1103 Subpart 8 is needed and reasonable.

Proposed Rule 1340.1103 Subpart 8. UBC Section 1103.2.4.2 -- Other Signs.

19. Proposed rule part 1340.1103 Subpart 8 incorporates both UBC Section 1103.2.4.2 and CABO/ANSI A117.1 sections 4.28.2, 4.28.3, 4.28.5, 4.28.6, and 4.28.7 by reference. The rule applies to signage indicating the availability of an assistive listening system at assembly areas. The signage assures that the public is informed of

such a system being available in a location. The CABO/ANSI references meet the requirements of Section 4.1.2(7) of the ADAAG. JPQ, Inc. suggested that the rule be clarified by requiring the signage in the assembly area. The Department, in response to testimony at the hearing, indicated in its posthearing comments that it will modify 1340.1103 Subpart 8 (1103.2.4.2) by clarifying the location of signage for assistive listening systems. Changing the location of a sign is not a substantial change to the published rule. Proposed Rule 1340.1103 Subpart 8 is needed and reasonable.

Proposed Rule 1340.1104. UBC Section 1104.2.5 -- Egress and Areas of Refuge: Two-way Communication.

20. Proposed rule 1340.1104 provides that areas of refuge shall have a two-way, visible and audible, communication system which will connect the area of refuge and a central control point. The proposed rule requires that the location of the central control point be approved by the fire department. The proposed rule eliminates the exception for buildings of four stories or less in height. JPQ, Inc. suggested using the ADA terminology of “appropriate administrative authority” instead of fire department. The Department has chosen not accept the suggestion. The term “appropriate administrative authority” is too vague to indicate who actually is authorized to approve the location of the central control point. The rule as originally proposed is needed and reasonable.

Proposed Rule 1340.1105 Subpart 1. UBC Section 1105.3 -- Facility Accessibility.

21. The proposed rule concerning platform lifts complies with the definition of “accessible” contained in UBC Section 1102. The proposed rule ensures accessibility to persons with disabilities to the levels and spaces of an accessible floor without dependence on other personnel. JPQ, Inc. suggested that further language be provided to clarify whether key-operated lifts are available for independent operation. The Department declined to change the rule. The issue of key operation is not suitable for resolution in a rulemaking proceeding, since the particular facts of an application will control whether key-operation is the appropriate alternative to provide for accessibility. The Department has demonstrated the rule is needed and reasonable as proposed.

Proposed Rule 1340.1105 Subpart 2. UBC Section 1105.4.1 -- Drinking Fountains.

22. Subpart 2 of proposed rule 1340.1105 requires that where more than one drinking fountain is provided on a floor, 50 percent shall be accessible in accordance with CABO/ANSI A117.1. The proposed rule also provides for discharge spouts where only one drinking fountain is provided to be in compliance with CABO/ANSI A117.1. This rule satisfies the requirements of Section 4.1.3(10) of the ADAAG. Kent Warden, Executive Director of the Greater Minneapolis Building Owners and Managers Association suggestion a change that would allow a cup dispenser to meet the “or other equivalent water provision equipment shall be provided” requirement. The Department

noted that the access advisory committee had discussed the use of equivalent water provision equipment and the committee concluded the language establishes methods to obtain alternative drinking heights. Department Comment, at 4. The Department has shown the proposed rule to be needed and reasonable.

Proposed Rule 1340.1105 Subpart 3. UBC Section 1105.4.8 -- Telephones.

23. Subpart 3 establishes the accessibility requirements for telephones. There is currently no language in Chapter 11 of the UBC dealing with this issue. The proposed rule requires that where public telephones are provided, 25 percent, but not less than one shall be accessible and be provided with a telecommunications device for the deaf (TDD). The rule provides for directional signage indicating the location of the nearest TDD. MCSDHHP supported the Department's proposed language and suggested additional language to require both coin and coin-less operation be required of TDD telephones. Doug Bahl supported the coin-operated telephone suggestion and urged that portable TDD telephones not be allowed as an alternative to a permanent telephone. JPQ, Inc. suggested that the rule require accessible telephones in criminal holding cells. The Department has chosen not to adopt further language. Proposed subpart 3 meets the requirements of Section 4.1.3.(17) of the ADAAG. Operators of jails will have to reasonably accommodate persons who need TDD/TTY on a case-by-case basis. With the particular concerns for such facilities the imposition of general rules for holding cells regarding accessible telephones is not required to render the rule needed or reasonable. While coin-less operation may cost consumers more, the statutory authority of the Department to require coin-operated telephones is, at best, questionable. While portable TDD units meet the minimum requirements for accommodating persons with hearing impairment, building owners have an incentive to provide permanent TDD units to avoid the difficulties in setting up portable units. The Department has shown the proposed rule to be needed and reasonable.

Proposed Rule 1340.1105 Subpart 4. UBC 1105.4.9 -- Swimming Pools.

24. This proposed rule provides for the accessibility of common or public-use swimming pools, hot tubs, spas, and similarly provided facilities. Currently, no language exists addressing this issue. The proposed rule satisfies the requirements of Title II, Section 202 and Title III Section 301 of the ADA. JPQ, Inc. suggested that the Department substitute different language in place of the term "hydraulic" to incorporate pneumatic or other devices to allow accessibility. The Department did not respond to this issue. The term "hydraulic" is not vague or unreasonable as it is used here. The proposed rule allows for the use of "other means" in addition to hydraulic mechanisms for accessibility. The proposed rule is needed and reasonable.

Proposed Rule 1340.1106. UBC Section 1106.1 -- Accessible Exterior Routes; General.

25. The proposed rule maintains Minnesota Rule 1340.0300 for exterior accessible slopes; which has been in existence for 20 years. Both the existing standard

and the proposed rule require that exterior accessible routes shall not exceed a slope of 1:20. At the hearing, the Department proposed an amendment to the exception language (which would allow a slope of 1:12 for curb ramps) limiting the curb ramp to a maximum rise of six inches. Testimony at the hearing focused on ADA and ANSI requirements that a slope be 1:12, resulting in a need for the ramp to be six feet long to rise six inches. Mike Lyner, of RSP Architects, proposed a change from the 1:20 standard to 1:12 for all ramps. Lyner questioned whether the Department intended to allow a series of curb cuts that would, in effect, exceed the 1:20 slope requirement. The Department stated that the rule was not intended to allow five or six curb cuts. Curt Wiehle of the Minnesota State Council on Disability, on behalf of the Department, suggested that wording could be added to expressly prohibit the use of a series of curb cuts. While a person with impaired mobility could negotiate one curb cut over a relatively steep angle for a six inch rise, this task becomes much more difficult if a number of these features are strung together. The existing language of the proposed rule has been shown to be needed and reasonable. Additional language could be added to the proposed rule indicating that series of curb cuts do not meet the accessibility standard without constituting a substantial change.

Proposed Rule 1340.1107. UBC Section 1107.3 -- Parking Facilities; Signs.

26. Proposed rule 1340.1107 was not objected to by any of those who timely submitted written comments or testimony at the hearing. The proposed rule part provides for signage for accessible and van-accessible parking spaces by complying with CABO/ANSI A117.1 and Minn. Stat. § 169.346 subd. 2 ¶ (a), which includes the international symbol of accessibility. The rule is needed and reasonable.

Proposed Rule 1340.1110. CABO/ANSI A117.1 Section 4.3.10.5 -- Accessible Route.

27. An addition to proposed rule 1340.1110 was made by the Department at the hearing to limit the for a clear space of one and one-half inches between a handrail and a wall. No one objected to the addition of this provision, either through written comments or testimony at the hearing. The proposed rule is needed and reasonable. The Department should identify the proposed rule with its own subpart. The new rule part does not constitute a substantial change.

Proposed Rule 1340.1120. CABO/ANSI Section 4.6.2 -- Parking Spaces.

28. Proposed rule 1340.1120 specifies location and requirements for parking signage. Provisions are made for parallel parking space requirements as no prior requirements existed. At the hearing, the Department submitted an addition to the van accessible access aisle language. The new language would require van access aisles to be identified by a sign mounted from 48 to 60 inches between the bottom of the sign and the parking surface. The purpose of this proposal is to comply with the new sign configuration guidelines and ensure that persons do not use the access aisle as a parking space. No commentators objected to this proposal, either through written comments or testimony at the hearing. The proposal as stated does not constitute a substantial change. The proposed addition is needed and reasonable.

Proposed Rule 1340.1130 Subpart 1. CABO/ANSI A117.1 Section 4.10.1.12.1 -- New Elevators.

29. Proposed rule 1340.1130 provides for elevator control buttons to conform to minimum dimensions and to be raised or flush and arranged with numbers in ascending order. The rule satisfies the requirements of Section 4.10.12 of the ADAAG. The proposed rule part is needed and reasonable.

Proposed Rule 1340.1130 Subpart 2. CABO/ANSI A117.1 Section 4.10.1.14 -- Emergency Communications.

30. The proposed rule part provides for a limitation on the height of emergency communication systems, if such systems are installed in elevators, to 48 inches above the floor. MCSDHHP suggested a clarification that the signaling device was not limited to voice-only communication. The Department agreed with the comment and modified the rule to provide that “[t]he car emergency signaling device shall provide for communication in both visual and auditory modes.” This modification does not constitute a substantial change. The proposed rule part as modified is needed and reasonable.

Proposed Rule 1340.1140. CABO/ANSI A117.1 Section 4.10.2.5.1 -- Existing Elevators.

31. As with the rule on new elevators (see Finding 29, above), proposed rule 1340.1140 provides for control buttons in existing elevators to conform to minimum dimensions and to be raised or flush and arranged with numbers in ascending order. The rule satisfies the requirements of Section 4.10.12 of the ADAAG. The proposed rule part is needed and reasonable.

Proposed Rule 1340.1150. CABO/ANSI A117.1 Section 4.13.6.2 -- Maneuvering Clearances at Doors.

32. Proposed rule 1340.1150 deletes the requirement for a door closer and requires that clear floor space be provided on any door having a latch. The proposed rule adopts the language of CABO/ANSI A117.1 with the deletion of the “closer” language. Gaius Nelson suggested that, with the exclusion of a door closer, narrower corridors and less clearance at doorways can be used. Tr. at 76. Such changes to the rule would allow for substantial cost savings, since space devoted to corridors and doorways would become usable space. The Department declined to make any changes to the rule based upon this comment. Removal of a door closer is a clear benefit to persons impaired in physical mobility. However, this assistance does not

necessarily remove the need for clearance in the doorway. The Department has shown the rule is needed and reasonable, as proposed.

Proposed Rule 1340.1150. CABO/ANSI A117.1 Section 4.13.12 -- Automatic Doors.

33. At the hearing, the Department proposed part 1340.1150 to require that manually activated push button controls have a five-inch minimum diameter and be centered no more than 36 inches above the floor for automatic doors. Automatic doors are not required for under the code. This proposed rule received no critical comment. The proposed rule part has been shown to be needed and reasonable.

Proposed Rule 1340.1160. CABO/ANSI A117.1 Section 4.16.7 -- Diaper Changing Tables.

34. Proposed rule 1340.1160 requires that when provided, changing tables are to have the work surface no higher than 34 inches above the floor. The mounting height is based on CABO/ANSI standard 4.31.4 for the height of work surfaces and service counters. JPQ, Inc. suggested that the placement of the changing tables be regulated to insure they do not protrude and restrict access. When not in use, changing tables must be located so as not to narrow accessibility routes to an extent violative of these rules. When in use, changing tables could impair access without necessarily being violative of the rules. The changing table is functionally no different from a door or cleaning cart for the purposes of the accessibility rules. JPQ, Inc. also suggested that the operating mechanism be located to be within the range of a person with impaired mobility. No language was suggested to accomplish that goal. There is nothing in the record to suggest where that operating mechanism ought to be located or whether such devices are useful for persons with impaired mobility. Proposed rule 1340.1160 is needed and reasonable as proposed.

Proposed Rule 1340.1170, Subpart 1. CABO/ANSI A117.1 Section 4.17.2 -- Water Closets.

35. Proposed rule 1340.1170, subpart 1 requires 48 inches of space in front of accessible water closets. The word minimum was struck from the rule, making the 48 inches an absolute requirement. The only comment on this proposed rule part was an objection to absolute measurements. The Department did not respond to this objection. The Judge considers the chances of a building official demanding a redesign of a building plan for providing more than 48 inches of clearance to be remote. The wording is taken from the CABO/ANSI standards. The Department's reliance upon the CABO/ANSI standard is reasonable. Proposed rule part 1340.1170, subpart 1, is needed and reasonable.

Proposed Rule 1340.1170 Subpart 2. CABO/ANSI A117.1 Section 4.17.4.1 -- Horizontal Grab Bar.

36. Proposed rule 1340.1170, subpart 2, incorporates the current language found in Minnesota Rule 1340.0500. The proposed rule adds a requirement for a vertical grab bar and sets particular measurement standards for its location. The vertical grab bar has developed the nickname “the Minnesota bar.” At the hearing, several building officials expressed their opposition to the inclusion of this proposed rule to the building code. These commentators noted that the vertical grab bar requirement is unique to Minnesota and that the requirement will continue to cause confusion to design professionals from out of state. The Department noted that the disability community had generally supported the vertical grab bar and had stated that disabled persons need such a bar. A large number of comments from disabled persons and service providers supported retention of the vertical grab bar requirement as helpful to persons with impaired mobility. There is no undue confusion created by the vertical grab bar requirement. The existence of a nickname for the feature suggests there is at least some knowledge of the requirement. The Department has shown the proposed rule part to be needed and reasonable.

Proposed Rule 1340.1170 Subpart 3. CABO/ANSI A117.1 Section 4.17.6 -- Dispensers.

37. Proposed rule 1340.1170, subpart 3, was not objected to in the rulemaking proceeding. The rule provides for toilet paper dispensers to be located below the horizontal grab bar to assure that both the horizontal and vertical bars are unobstructed and remain accessible. This proposed rule part is needed and reasonable.

Proposed Rule 1340.1180 Subpart 1. CABO/ANSI A117.1 Section 4.18.3.1 -- Wheelchair Accessible Stalls.

38. Proposed rule 1340.1180, subpart 1 requires 48 inches of clearance in front of accessible water closets. The 48 inch figure is in conformity with other sections of the code and is based on CABO/ANSI standards. The Department has adopted a uniform standard for clearance. The standard chosen is adequate to ensure that water closets are accessible to persons with mobility impairments. Maintaining uniformity of measurements in a state building code in reference to wheelchair accessibility is reasonable. Proposed rule part 1340.1180 Subpart 1 is needed and reasonable.

Proposed Rule 1340.1180 Subpart 2. CABO/ANSI A117.1 Section 4.18.3.2 -- Wheelchair Accessible Stalls.

39. Proposed rule 1340.1180, subpart 2, was not objected to by any commentators. The proposed rule provides for a required depth of 66 inches for all doors that swing into the stall. This measurement takes into account the requirement at Rule 1340.1170. The proposed rule provides adequate space inside the stall for a

wheelchair to turn around. Proposed rule part 1340.1180, subpart 2 is needed and reasonable.

Proposed Rule 1340.1190. CABO/ANSI A117.1 Section 4.20.5 -- Lavatories and Sinks.

40. Proposed rule 1340.1190 was not objected to by any commentator in this proceeding. The proposed rule part mandates that faucets comply with CABO/ANSI A117.1 Section 4.25.4. Self-closing faucets shall remain open for 10 seconds. The rule prohibits self-closing faucets that require reaching forward and pushing down to activate the mechanism from being used at accessible locations. The rule is needed and reasonable.

Proposed Rule 1340.1200. CABO/ANSI A117.1 Section 4.21.4.4 -- Bathtubs; Vertical Grab Bar.

41. Proposed rule 1340.1200 incorporates the vertical grab bar requirement of Minnesota Rule 12340.0500 subpart 4 (the “Minnesota bar” discussed at Finding 36, above), for bathtubs. The location of the bar provides assistance to individuals as they enter and exit the bathtub. The proposed rule is designed to implement requirements for bathtubs. The Department has shown the proposed rule to be needed and reasonable as written.

Proposed Rule 1340.1210. CABO/ANSI A117.1 Section 4.22.4.3 -- Shower Stalls.

42. Proposed rule 1340.1210 incorporates the “Minnesota bar” in shower stalls. The location of the bar provides assistance to individuals as they enter and exit the shower stall. Harold Kiewel, R.A., suggested that the proposed rule should define requirements for a vertical grab bar in a transfer shower and a vertical grab bar option for a roll-in shower. The Department responded that insufficient reason existed for incorporation. The separation of showers between transfer and roll-in is likely to cause confusion rather than treating both types as accessible and making the grab bar requirement apply to all accessible showers. This rule supplements part 1340.1200. Proposed rule 1340.1210 is needed and reasonable.

Proposed Rule 1340.1220. CABO/ANSI A117.1 Section 4.24.2.2 -- Position of Grab Bars.

43. Proposed rule 1340.1220 incorporates Section 4.24.2.2 of CABO/ANSI A117.1 and adds language that vertical grab bars shall be installed as required for water closets, bathtubs, and showers. This additional provision follows the language of other sections of the code previously discussed. Proposed rule 1340.1190 is needed and reasonable.

Proposed Rule 1340.1230. CABO/ANSI A117.1 Section 4.31.5 -- Checkout Counters.

44. Proposed rule 1340.1230 sets the height of checkout counters to comply with the requirements for working heights and service counters found at Section 7.2 of the ADAAG. The rule is needed and reasonable.

Proposed Rule 1340.1240 Subpart 2. CABO/ANSI A117.1 Section 4.33.3.1 -- Doors.

45. Proposed rule 1340.1230, subpart 2, eliminates the exception to the requirement that doors not swing into the clear floor space. Allowing for an exception to the rule for toilets or bathrooms for individual use only defeats the rule. The proposed rule deleting the exception satisfies the requirements of Section 100.205 of the Federal Fair Housing Act. The rule is needed and reasonable.

Proposed Rule 1340.1240 Subpart 3. CABO/ANSI A117.1 Section 4.33.3.2.3 -- Grab Bars.

46. Proposed rule 1340.1240, subpart 3, adds an exception to the overall requirement that grab bars in compliance with section 4.24 of the ANSI/CABO A117.1 shall be installed in accessible dwelling units or the dwelling unit be adaptable to add grab bars. The proposed exception requires the installation of grab bars when the dwelling unit must be accessible. No objections were raised to the proposed rule. The proposed rule part is needed and reasonable.

Proposed Rule 1340.1240 Subpart 5. CABO/ANSI A117.1 Section 4.33.3.4.3 -- Grab Bars.

47. Proposed rule 1340.1240, subpart 5, adds an exception that grab bars in accessible dwelling units shall be installed in compliance with section 4.21.4 of the CABO/ANSI A117.1. The exception requires the installation of grab bars in dwelling units required to be accessible and is in conformance with proposed rule part 1340.1103 Subparts 3 through 6 which require accessible dwelling units. As with subpart 3, subpart 5 is needed and reasonable.

Proposed Rule 1340.1240 Subpart 6. CABO/ANSI Section 4.33.3.5 -- Showers.

48. Subpart 6 of proposed rule 1340.1240 sets requirements for installation of grab bars or providing additional reinforcement to add grab bars in showers. The new language limits the application of exception 2 to "adaptable dwelling units." Gaius Nelson questioned whether the proposed rule eliminates new technologies or new configurations that do not require prescribed wall locations in nursing home and health care facilities. The Department responded that Chapter 11 of the UBC specifically allows the use of alternate methods and materials to comply with the intent of the code. The Department agreed that the health care industry has unique needs and waivers would be granted as appropriate to meet those needs. Subpart 6 is needed and reasonable, as proposed.

Proposed Rule 1340.1250. CABO/ANSI A117.1 -- Appendix.

54. Proposed rule 1340.1250 provides for changes to illustrations in Appendix B of the CABO/ANSI A117.1. The illustrations provide examples of how the various requirements for water closets interrelate to provide access to person with impaired mobility. There were no adverse comments made to these illustrations. The proposed rule is needed and reasonable.

Other Comments.

55. Gaius Nelson, in his written comments, charged that the rule-making process is flawed because the Department did not consider the needs of older and frailer individuals. Among the examples he cited of this flawed approach was the requirements for grab bars to be mounted a set distance from the water closet. Nelson asserts that such rigid requirements prevent design of assisted use of such features. Minn. Stat. § 16B.61 subd. 1 grants the Building Codes Division the authority to establish a code of standards that conforms insofar as practicable to model building codes generally accepted and in use throughout the United States. The Department has formed an Access Code Committee with representatives from building officials, other government representatives, accessibility consultants, design officials, and members of the Minnesota Council on Disability. Eleven one-day seminars were conducted around the State of Minnesota concerning proposed accessibility rules. The Department has expressly acknowledged that waivers are appropriate in settings serving particular populations. The Department has adequately considered the range of persons with disabilities in proposing these rules.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Department gave proper notice of this rulemaking proceeding.
2. That the Department has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt these rules.
3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. § 14.05, subd. 1, § 14.15, subd. 3 and § 14.50 (i)(ii).
4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).
5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules

as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, Subp. 1, and 1400.1100.

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated: August ____, 1995.

ALLAN W. KLEIN
Administrative Law Judge

Reported: Connie S. Dyke
Kirby A. Kennedy and Assoc.
Transcript, one volume