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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules ...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD: Contact through relay

Jim Doyle, Governor  
Aaron Olver, Secretary

August 31, 2010

Robert Marchant  
Senate Chief Clerk  
B20 Southeast, State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Patrick Fuller  
Assembly Chief Clerk  
Room 401  
17 West Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE  
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 10-089

RULE NO.: Chapters Comm 21 and 28

RELATING TO: Carbon Monoxide Detectors in Dwellings

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron Olver".

Aaron Olver  
Secretary

August 31, 2010

Senator Fred Risser  
President of the Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53707

Representative Michael Sheridan  
Speaker of the Assembly  
Room 211 West, State Capitol  
Madison, Wisconsin 53708

Dear Senator Risser and Representative Sheridan:

### NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 10-089

RULE NO.: Chapters Comm 21 and 28

RELATING TO: Carbon Monoxide Detectors in Dwellings

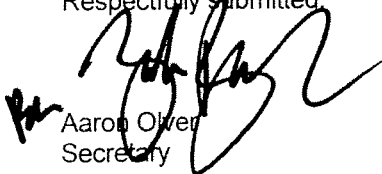
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
  - a) Rule Report.
  - b) Public Hearing Attendance Record.
  - c) Public Hearing Comment and Agency Response Form.
  - d) Legislative Council Rules Clearinghouse Report.
  - e) Response to Legislative Council Rules Clearinghouse Report.
  - f) Fiscal Estimate.
  - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

  
Aaron Olver  
Secretary



P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD: Contact through relay

Jim Doyle, Governor  
Aaron Oliver, Secretary

August 31, 2010

Bruce Hoesly, Code Editor  
1 East Main Street, Suite 200  
Madison, Wisconsin 53703

Dear Mr. Hoesly:

## NOTIFICATION OF RULE REFERRAL

This letter is to notify you that pursuant to section 227.19, Stats., the Department of Commerce has referred:

CLEARINGHOUSE RULE NO.: 10-089

RULE NO.: Chapters Comm 21 and 28

RELATING TO: Carbon Monoxide Detectors in Dwellings

to the presiding officers of the Senate and Assembly of the Legislature for referral to the appropriate standing committees for Legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron Oliver".

Aaron Oliver  
Secretary

# RULE REPORT

## Department of Commerce

Clearinghouse Rule No.: 10-089

Rule No.: Chapters Comm 21 and 28

Relating to: Carbon Monoxide Detectors in Dwellings

Contact person for substantive questions:

Contact person for internal processing:

Name Larry Swaziek

Name Larry Swaziek

Title Program Manager

Title Program Manager

Telephone Number 267-7701

Telephone Number 267-7701

1. Basis and purpose of the proposed rule.

The basis of the proposed rules is ss. 101.02 (1) and 101.63 (1), Stats., and 101.615 (lm) and 101.647, Stats., as created by 2009 Wisconsin At 158. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 158 relating to the installation and maintenance of carbon monoxide detectors in dwellings. The Act, which becomes effective February 1, 2011, affects the owners of one- and two-family dwellings where fuel-burning appliances are installed.

2. How the proposed rule advances relevant statutory goals or purposes.

Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats., grants the Department of Commerce authority to promulgate rules that establish uniform, statewide standards for the construction of one- and two-family dwellings. To fulfill this responsibility, the Department has promulgated these proposed rules to establish minimum requirements for the installation and maintenance of carbon monoxide alarms in dwelling units. For consistency, the proposed rules are modeled after other rules relating to smoke alarms and carbon monoxide alarms in tourist rooming houses. In addition, the department reviewed the provisions under 2009 Wisconsin Act 158 in conjunction with the department's broad authority under ss 101.02 (1) and 101.63 (1), Stats., to protect public health and safety regarding the construction of one- and two-family dwellings.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No changes were made.

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 10-089

RULE NO.: Chapters Comm 21 and 28

RELATING TO: Carbon Monoxide Detectors in Dwellings

Final regulatory flexibility analysis not required. (Statement of determination required.)

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the proposed rules to amend Chapters Comm 21 and 28 will not have a significant impact on a substantial number of small businesses. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 158. The Act affects the owners of one- and two-family dwellings. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

*(Continued on reverse side)*

3. Nature and estimated cost of preparation of any reports by small businesses.
  
4. Nature and estimated cost of other measures and investments required of small businesses.
  
5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.
  
6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.



LCRC  
FORM 2

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 10-089

AN ORDER to repeal Comm 21.097 (1) (b); to renumber Comm 21.097 (1) (a), (2), (3), (4), (5), (6), and (7); to renumber and amend Comm 28.01 and 28.02; to amend chapter Comm 28 (title); and to create Comm 21.097 (1), (2), and (3) (title) and (f), 28.01 (2), 28.02, and 28.04, relating to carbon monoxide detectors in dwellings and affecting small business.

Submitted by **DEPARTMENT OF COMMERCE**

07-15-2010 RECEIVED BY LEGISLATIVE COUNCIL.

08-10-2010 REPORT SENT TO AGENCY.

RS:MM



**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

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*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 10-089

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

It appears that s. Comm 21.097 (2) (c) conflicts with s. 101.647 (3) (am) 1., Stats., by requiring carbon monoxide detectors in all dwellings covered by the Uniform Dwelling Code to be powered by the dwelling’s electrical service, while the statute imposes this requirement only on dwellings built after the effective date of the statute. Under s. Comm 20.02 (1) (a), the Uniform Dwelling Code (chs. Comm. 20-25) applies to all one- and two-family dwellings built on or after June 1, 1980. Thus, the requirement in s. Comm 21.097 (2) (c) would apply to all dwellings built after that date. Section 101.647 (3) (am), Stats., however, requires detectors to be powered by the dwelling’s electrical service only if the building permit for initial construction of the dwelling was issued on or after February 1, 2011.

#### 2. Form, Style and Placement in Administrative Code

- a. The treatments of SECTIONS 1 and 2 of the rule should be accomplished as follows:
  - SECTION 1. Comm 21.097 (1) (a) is renumbered Comm 21.097 (3) (a).
  - SECTION 2. Comm 21.097 (1) (b) is repealed.
  - SECTION 3. Comm 21.097 (2), (3), (4), (5), (6), and (7) are renumbered Comm. 21.97 (3) (b), (c), (d), (e), (g), and (h).

b. Section 21.097 (1) (a) should be rewritten to read: ““Fuel-burning appliance” has the meaning given in s. 101.647 (1) (b), Stats. “Fuel-burning appliance” includes stoves, ovens,....” Also, the cross-reference in the note should be to s. 101.647 (1) (b), Stats.

c. Rule titles are not part of the text of a rule. Thus, if s. Comm 21.097 (2) is intended to apply only to one- or two-family dwellings, that application should be clearly stated in the text of the rule.

d. The rule proposes to renumber existing s. Comm 21.097 (6) and (7) to s. Comm 21.097 (3) (g) and (h). Each of those provisions should also be amended to clarify that they apply only to sub. (3), not to s. Comm 21.097 in its entirety, by changing “this section” to “this subsection.”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. Comm 21.097 (2) 1., the phrase “the effective date of this subdivision of” should be deleted from the note’s quotation of s. 101.647 (3) (am) 1., Stats.

b. In s. Comm 28.01 (1), the reference to “this code” should be replaced by a reference to “this chapter.” [See also s. Comm 28.02 (1).]

c. In s. Comm 28.02 (2) (a), the notation “, Stats.” should be inserted after the number “(3).” Also, in the note to sub. (2), the correct cross-reference is “s. 101.647 (3) (a).”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The term “carbon monoxide detector,” rather than “carbon monoxide alarm,” should be used in s. Comm 21.097, since “carbon monoxide detector” is the term that is defined and used in the underlying statute.

b. Section Comm. 21.097 (2) (b) 1. is confusing. It appears to require the installation of more than one carbon monoxide alarm on a floor level that contains one or more sleeping areas. Is this the intent? Also, should the rule clarify that a “floor level” includes the basement or include a separate location requirement for a basement?

c. Section Comm 28.02 (2) (a) should be rewritten to require the owner of the dwelling, rather than the dwelling itself, to install and maintain carbon monoxide detectors. Section Comm 28.02 (2) (b) should be similarly rewritten.

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 10-089

RULE NO.: Chapters Comm 21 and 28

RELATING TO: Carbon Monoxide Detectors in Dwellings

Agency contact person for substantive questions.

Name: Larry Swaziek

Title: Program Manager

Telephone No. 267-7701

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

*(Continued on reverse side)*

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached

## COMMENTS ON LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Clearinghouse Rule No. 10-089

Rule No.: Chapters Comm 21 and 28

Relating to: Carbon Monoxide Detectors in Dwellings

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. The department realizes that the term “carbon monoxide detector” is used in the underlying statute. National construction standards, however, uses the term “alarm” or refers to the device as a “stand alone alarm” because a “detector” does not provide an audible alarm. The department prefers to use the industry’s terminology.
- b. Yes, you could have more than one carbon monoxide alarm on a floor level depending on the location of the sleeping areas. For example, some ranch-style homes have the master bedroom in one wing and the other bedrooms are located in another wing with the kitchen and living area between them.

No, the rule does not need to clarify that “floor level” includes the basement. This is clarified in s. Comm 20.07 (8), which is the definition of a basement and refers to it as a “floor,” and in s. 101.647 (3) (am), Stats., which requires that a carbon monoxide alarm be installed in the basement of the dwelling and on each floor level.

DEPARTMENT OF COMMERCE  
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapters Comm 21 and 28

DATE: August 11, 2010

RELATING TO: Carbon Monoxide Detectors in Dwellings

TIME: 10 a.m.

LOCATION: 3rd Floor Conference Room, #3B  
Thompson Commerce Center

CITY: Madison, WI

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
Fred W. Brown BRAC BOMERS	HI Electron WI Builders Assoc.	Cambridge, WI Madison, WI	X		

**DEPARTMENT OF COMMERCE  
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 10-089		Hearing Location: Madison, WI	
Rule Number: Chapters Comm 21 and 28		Hearing Date: August 11, 2010	
Relating to: Carbon Monoxide Detectors in Dwellings			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Exhibit 1	Fred W. Brown HI Electron N3977 Meadow Drive Cambridge, WI 53523	Supports the process and code package. Believes the carbon monoxide alarm requirement is a good safety measure.	Support noted.
Exhibit 2	Don Iverson National Electrical Manufacturers Association (NEMA) 1102 S. Eifert Road Mason, MI 48854	a. Supports carbon monoxide detection devices being listed, but believes the 2009 Wisconsin Act 158 limits consumers' and manufacturers' choices by requiring a UL listing. Recommends instead that listings by any Nationally Recognized Testing Laboratory (NRTL) that is U.S. Occupational Safety and Health Administration (OSHA) accredited to test and certify to American National Standards Institute (ANSI)/UL Standards be allowed. b. Requests that carbon monoxide alarms and detectors be installed in accordance with the National Fire Protection Association (NFPA) 720, <i>Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment</i> .	a. Support noted. However, the administrative rules as written recognize the ability of independent testing agencies to certify compliance to the UL standard.  b. Disagree. Many of the provisions covered in residential alarms under NFPA 720 are currently addressed in state Statutes, administrative rules and UL 2034.
Exhibit 3	Pat Stevens Wisconsin Builders Association (WBA) 4868 High Crossing Blvd. Madison, WI 53704	Supports the ruling for carbon monoxide detectors in one- and two-family dwellings, but prefers the flexibility allowed in s. 101.647, Stats., relating to the location of the detectors. Requests that proposed Comm 21.097 (2) (b) be modified to reflect the statutory language.	Support noted. However, the proposed rules are consistent with language provided in national standards. For example, the International Residential Code (IRC) and NFPA 720 recommend locating carbon monoxide alarms near sleeping areas. The distance requirement is comparable to that required for a smoke alarm so the two devices may be combined as allowed in s. 101.647 (2), Stats.
Exhibit 4	Mark Wagner Siemens Industry, Inc. Building Technologies 6737 W. Washington St., Suite 2110 Milwaukee, WI 53214	Supports the ruling for carbon monoxide alarms, but points out that a combination smoke and carbon monoxide detector will not give the earliest warning of carbon monoxide presence. Recommends separate detectors with the smoke alarm ceiling mounted and the carbon monoxide alarm mounted near the floor level.	Support noted. However, the proposed rules reflect the statutory allowance in s. 101.647 (2), Stats., for a combined carbon monoxide and smoke alarm device. In addition, national standards and manufacturers' instructions do not dictate a specific placement on ceilings or walls.



FISCAL ESTIMATE  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Chapters Comm 21 and 28  
Amendment No. if Applicable

Subject

Carbon Monoxide Detectors in Dwellings

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be Possible to Absorb  
Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

1.  Increase Costs

Permissive  Mandatory

2.  Decrease Costs

Permissive  Mandatory

3.  Increase Revenues

Permissive  Mandatory

4.  Decrease Revenues

Permissive  Mandatory

5. Types of Local Governmental Units Affected:

Towns  Villages  Cities

Counties  Others \_\_\_\_\_

School Districts  WTCS Districts

Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules establish requirements for the installation and maintenance of carbon monoxide alarms in one-and two-family dwellings. The requirements reflect the statutory mandates of 2009 Wisconsin Act 158. For consistency, they are modeled after other rules relating to smoke detectors in dwellings and carbon monoxide detectors in tourist rooming houses. The promulgation of these rules will not affect department revenue or expenditures.

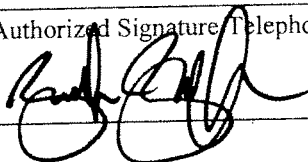
Act 158 does affect the owners of one- and two-family dwelling. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act. Battery or plug-in type carbon monoxide alarms typically range in cost from \$25 to \$50. New construction installation costs for a hard-wired type carbon monoxide alarm with battery backup and interconnection ranges from \$90 to \$110. Combination carbon monoxide alarms and smoke alarms are also available. Smoke alarms are currently required for residential occupancies. The use of combination carbon monoxide alarms and smoke alarms should result in installation and labor cost savings over that for separate systems.

Long-Range Fiscal Implications

No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)  
Commerce/Larry Swaziek, 267-7701

Authorized Signature Telephone No.



Date

7/13/10

**FISCAL ESTIMATE WORKSHEET**  
 Detailed Estimate of Annual Fiscal Effect  
 DOA-2047(R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
 Chapters Comm 21 and

Amendment No.

**Subject**  
 Carbon Monoxide Detectors in Dwellings

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs By Category</b>	\$ 0	\$ -
State Operations - Salaries and Fringes		
(FTE Position Changes)	( 0 FTE)	( - FTE)
State Operations - Other Costs	0	-
Local Assistance	0	-
Aids to Individuals or Organizations	0	-
<b>TOTAL State Costs By Category</b>	<b>\$</b>	<b>\$ -</b>
<b>B. State Costs By Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
<b>III. State Revenues-</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$ 0	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

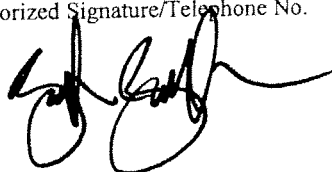
\$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/Larry Swaziek, 267-7701

Authorized Signature/Telephone No.



Date

7/13/10



State of Wisconsin \ Department of Commerce

# **RULES IN FINAL DRAFT FORM**

**Rule No.:** Chapters Comm 21 and 28  
**Relating to:** Carbon Monoxide Detectors in Dwellings  
**Clearinghouse Rule No.:** 10-089

The Wisconsin Department of Commerce adopts an order to repeal Comm 21.097 (1) (b) and (4); to renumber Comm 21.097 (1) (a) and Comm 21.097 (2), (3), (5), (6) and (7); to renumber and amend Comm 28.01 and Comm 28.02; to amend Comm 20.24 Table 20.24-14, Comm 21.097 (4) (g) and (h) and Chapter Comm 28 (title); and to create Comm 21.097 (1), (2) and (3), Comm 21.097 (4) title, (d) and (f), Comm 28.01 (2), Comm 28.02 and Comm 28.04 relating to carbon monoxide detectors in dwellings and affecting small business.

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### **Analysis of Rule**

#### **1. Statutes interpreted.**

Statutes Interpreted: ss. 101.615 (lm) and 101.647, Stats., as created by 2009 Wisconsin Act 158.

#### **2. Statutory authority.**

Statutory Authority: ss. 101.02 (1) and 101.63 (1), Stats., and ss. 101.615 (lm) and 101.647, Stats., as created by 2009 Wisconsin Act 158.

#### **3. Related statute or rule.**

Statutes: s. 101.149, Stats.  
Administrative rules: Chapters Comm 61-66, Commercial Building Code

#### **4. Explanation of agency authority.**

Under the statutes cited, the Department of Commerce protects public health, safety, and welfare by adopting rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings. In addition, 2009 Wisconsin Act 158 specifically directs the department to address carbon monoxide alarms involving these types of buildings.

#### **5. Summary of proposed rules.**

The proposed rules establish minimum requirements for the installation and maintenance of carbon monoxide alarms in one- and two-family dwellings. The requirements reflect the statutory mandates of 2009 Wisconsin Act 158.

The rules would require the following:

- Carbon monoxide alarms shall be installed in a dwelling, the initial construction of which was commenced before, on or after February 1, 2011.
- In new dwellings with electrical service, the carbon monoxide alarms shall be continuously powered by the house electrical service and interconnected so that activation of one alarm will cause activation of all alarms.
- The alarms are listed and labeled in conformance with UL 2034, Underwriters Laboratories Inc, *Standard for Safety Single and Multiple Station Carbon Monoxide Alarms*.

#### **6. Summary of, and comparison with, existing or proposed federal regulations.**

An Internet-based search of the *Code of Federal Regulations (CFR)* and the *Federal Register* did not identify any federal requirements for the installation and maintenance of carbon monoxide alarms in one- and two-family dwellings.

#### **7. Comparison with rules in adjacent states.**

An Internet-based search for carbon monoxide alarm regulations in the states of Illinois, Iowa, Michigan and Minnesota found the following:

- **Illinois** requires the installation of carbon monoxide alarms under Public Act 094-0741, the Carbon Monoxide Alarm Detector Act, which was effective January 1, 2007. The act defines "dwelling unit" as a room or suite of rooms used for human habitation and includes a single-family residence as well as each living unit of a multiple-family residence and each living unit in a mixed-use building.
- **Iowa** requires the installation of carbon monoxide alarms in single-family rental units and multiple-unit residential buildings. .
- **Michigan** has not enacted any carbon monoxide alarm regulations for single-family residences at this time. Michigan does require as of December 1, 2009, newly constructed hotels, motels and boarding houses to install an operational carbon monoxide device.
- **Minnesota** statute, 299F.50, requires carbon monoxide alarms in all single family homes and multifamily apartments units: New construction as of January 1, 2007; existing single-family homes as of August 1, 2008; and existing multi-family and apartment buildings as of August 1, 2009.

## **8. Summary of factual data and analytical methodologies.**

In developing the proposed rules, the department reviewed the provisions under 2009 Wisconsin Act 158 in conjunction with the department's broad authority under ss. 101.02 (1) and 101.63 (1), Stats., to protect public health and safety regarding the construction of one- and two-family dwellings. For consistency, the proposed rules are modeled after other rules relating to smoke detectors, s. Comm 21.09, and carbon monoxide detectors in tourist rooming houses, s. Comm 21.097.

In addition, the review and assessment process involved the participation of the Uniform Dwelling Code (UDC) Council. The makeup of this Council is set under s. 15.157 (3), Stats. The members are appointed by the Governor's Office and represent the many stakeholders involved in the construction industry including designers, inspectors, labor and building contractors. (A listing of the UDC Council is provided at the end of this analysis.)

The UDC Council meets regularly, and the department gathers information and recommendations from its 18 members on the potential impacts of the administrative and technical requirements of the code.

## **9. Effect on small business including analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.**

The proposed rules implement the mandates imposed by 2009 Wisconsin Act 158. The Act affects the owners of one- and two-family dwellings. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

Battery or plug-in type carbon monoxide alarms typically range in cost from \$25 to \$50. New construction installation costs for a hard-wired type carbon monoxide alarm with battery backup and interconnection ranges from \$90 to \$110 if interconnection is involved. Combination carbon monoxide alarms and smoke alarms are also available. Smoke alarms are currently required for residential occupancies. The use of combination carbon monoxide alarms and smoke alarms should result in installation and labor cost savings over that for separate systems.

An economic impact report has not been required pursuant to s. 227.137, Stats.

## **10. Agency contact person.**

Larry Swaziek, Program Manager, [larry.swaziek@wisconsin.gov](mailto:larry.swaziek@wisconsin.gov), (608) 267-7701

**11. Place where comments are to be submitted and deadline for submission.**

The hearing record on this proposed rulemaking will remain open until August 18, 2010. Written comments on the proposed rules may be submitted to Larry Swaziek, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or email [larry.swaziek@wisconsin.gov](mailto:larry.swaziek@wisconsin.gov).

**Council Members and Representatives**

The proposed rules have been developed with the assistance of the Uniform Dwelling Code Council. The members of this Governor-appointed council are as follows:

Dennis Bauer.....	McFarland .....	Bauer & Raether Builders Inc
Jeffrey D. Bechard .....	Eau Claire.....	Sheet Metal Workers (SMW) Local 18
David Dolan-Wallace.....	Green Bay .....	Martinson Architects
Thomas Doleschy.....	Muskego.....	Chicago Regional Council of Carpenters
Dan Gorski.....	Madison.....	Veridian Homes
Robert Jakel .....	Kaukauna .....	City of Kaukauna
Brian Juarez .....	Fort Atkinson .....	City of Fort Atkinson, Department of Building Supervision
Steven Levine.....	Madison.....	Wisconsin Public Service Commission
Michael Mueller.....	Milwaukee.....	International Brotherhood of Electrical Workers (IBEW) Local 494
Frank Opatik .....	Wausau.....	Opatik Engineering LLC
Tom Palecek.....	Marshfield .....	Wick Building Systems
Robert Premo .....	Hartland.....	Village of Brown Deer Building Inspection
Gary Ruhl.....	Oshkosh.....	North East Wisconsin Building & Construction Trades Council
Mary Schroeder.....	Brookfield .....	Miller Homes Inc
Kathleen Stadtherr .....	Green Bay .....	City of Green Bay Building Inspection
William Turner.....	Hayward.....	Nelson Lumber and Home
John Vande Castle.....	Fond du Lac .....	Fond du Lac Mosaic Tile Co Inc
Michael Wallace .....	New Richmond .....	City of Hudson Building Inspection

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SECTION 1. Comm 20.02 (4) is amended to read:

**Comm 20.02 (4) RETROACTIVITY.** The provisions of this code are not retroactive, except as specified in s. ~~Comm 21.09~~ specifically stated in a rule.

SECTION 2. Comm 20.24 Table 20.24-14 is repealed.

SECTION 3. Comm 21.097 (1) (a) is renumbered Comm 21.097 (4) (a)

SECTION 4. Comm 21.097 (1) (b) and (4) are repealed.

SECTION 5. Comm 21.097 (2), (3), (5), (6) and (7) are renumbered Comm 21.097 (4) (b), (c), (e), (g) and (h).

SECTION 6. Comm 21.097 (1), (2) and (3) are created to read:

**Comm 21.097 (1) DEFINITIONS.** In this section:

(a) "Fuel-burning appliance" has the meaning given in s. 101.647 (b), Stats. Fuel-burning appliances include stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, fireplaces and heaters.

**Note:** Section 101.647 (1) (b), Stats., reads: "Fuel-burning appliance" means a device that is installed in a dwelling, that burns fossil fuel or carbon-based fuel, and that produces carbon monoxide as a combustion by-product.

(b) "Tourist rooming house" has the meaning given in s. DHS 195.03 (20).

**Note:** Section DHS 195.03 (20) reads: "Tourist rooming house" means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under ch. DHS 197.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Standards.* The devices shall conform with one of the following standards:

1. Carbon monoxide alarms shall be listed and labeled identifying conformance with UL 2034.

**Note:** Pursuant to this subdivision, carbon monoxide alarms need to be acceptable under the 2005 edition of the UL 2034 standard, *Single and Multiple State Carbon Monoxide Alarms*.

2. Carbon monoxide detectors and sensors as part of a gas detection or emergency signaling system shall be listed and labeled identifying conformance with UL 2075.

**Note:** Pursuant to this subdivision, carbon monoxide detectors and sensors need to be acceptable under the 2007 edition of the UL 2075 standard, *Gas and Vapor Protectors and Sensors*.

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

**Note:** See statutory reprint under s. Comm 21.097 (2) (a).

SECTION 7. Comm 21.097 (4) title, (d) and (f) are created to read:

**Comm 21.097 (4)** (title) TOURIST ROOMING HOUSES.

(d) The devices shall conform with one of the following standards:

1. Carbon monoxide alarms shall be listed and labeled identifying conformance with UL 2034.

**Note:** Pursuant to this subdivision, carbon monoxide alarms need to be acceptable under the 2005 edition of the UL 2034 standard, *Single and Multiple State Carbon Monoxide Alarms*.

2. Carbon monoxide detectors and sensors as part of a gas detection or emergency signaling system shall be listed and labeled identifying conformance with UL 2075.

**Note:** Pursuant to this subdivision, carbon monoxide detectors and sensors need to be acceptable under the 2007 edition of the UL 2075 standard, *Gas and Vapor Protectors and Sensors*.

(f) 1. For the purposes of s. 101.149 (2) (a) 4., Stats., "room" means an enclosed area affording space for any other human activity besides just servicing mechanical equipment, including fuel-burning appliances.

2. For the purposes of s. 101.149 (2) (a) 4., Stats., where a fuel-burning appliance is located within a closet or enclosed space not affording space for any other human activity within a dwelling unit or sleeping unit, a carbon monoxide alarm or detector shall be located within 75 feet of that closet or space.

SECTION 8. Comm 21.097 (4) (g) and (h) are amended to read:

**Comm 21.097 (4)** (g) Pursuant to s. 101.149 (6) (b), Stats., the department may issue orders for a violation of the provisions of this ~~section~~ subsection.

(h) Violation of the provisions of this ~~section~~ subsection shall be subject to the penalties provided under s. 101.149 (8), Stats.

SECTION 9. Chapter Comm 28 title is amended to read:

**Chapter Comm 28** (title) SMOKE DETECTORS AND CARBON MONOXIDE DETECTORS

SECTION 10. Comm 28.01 is renumbered Comm 28.01 (1) and as renumbered is amended to read:

**Comm 28.01 (1)** The purpose of this chapter is to implement the mandates specified in ~~1987 Wis. Act 376 and 1989 Wis. Act 109 ss. 101.145 and 101.645, Stats.,~~ concerning the installation and maintenance of smoke detectors in existing dwellings in relation to the application and effective date of chs. Comm 20 to 25, Uniform Dwelling Code of the department of commerce.

SECTION 11. Comm 28.01 (2) is created to read:

**Comm 28.01 (2)** The purpose of this chapter is to implement the mandates specified in ss. 101.149 and 101.647, Stats., concerning the installation and maintenance of carbon monoxide detectors in existing dwellings in relation to the application and effective date of chs. Comm 20 to 25, Uniform Dwelling Code of the department of commerce.

SECTION 12. Comm 28.02 is renumbered Comm 28.03, and as renumbered is amended to read:

**Comm 28.03 Smoke detectors.** ~~The owner of~~ Smoke detectors shall be installed and maintained in accordance with s. 101.645 (3), Stats., in a dwelling, the for which initial construction of which was commenced prior to before June 1, 1980, shall install and maintain smoke detectors in accordance with s. 101.645 (3), Stats.

**Note:** Section 101.645 (3), Stats., ~~states~~<sup>is</sup> reads: The owner of a dwelling shall install a functional smoke detector in the basement of the dwelling and on each floor level except the attic or storage area of each dwelling unit. The occupant of such a dwelling unit shall maintain any smoke detector in that unit, except that if any occupant who is not the owner, or a state, county, city, village or town officer, agent or employee charged under statute of municipal ordinance with powers or duties involving inspection of real or personal property, gives written notice to the owner that the smoke detector is not functional the owner shall provide, within 5 days after receipt of that notice, any maintenance necessary to make that smoke detector functional.<sup>2</sup>

**Note:** ~~On June 1, 1980 the uniform dwelling code, chs. Comm 20 to 25, went into effect. The code~~ Uniform Dwelling Code under s. Comm 21.09 specifies installation and maintenance requirements for smoke detectors in one- and 2-family dwellings constructed on or after June 1, 1980. The uniform dwelling code also reflects the installation and maintenance requirements specified in s. 101.645 (3), Stats.

SECTION 13. Comm 28.02 is created to read:

**Comm 28.02 Scope. (1)** Except as provided in sub. (2), the provisions of this chapter apply to a dwelling, for which initial construction commenced before June 1, 1980, where the dwelling serves as any of the following:

(a) A one- and 2-family dwelling.

**Note:** This includes a site-built dwelling, a manufactured building used as a dwelling, a modular home and a dwelling that may be designated as a cabin, seasonal home, temporary residence, etc.

(b) An adult family home providing care, treatment and services for 3 or 4 unrelated adults.

(c) A community-based residential facility providing care, treatment and services for 5 to 8 unrelated adults.

**(2)** (a) Carbon monoxide detectors shall be installed and maintained in accordance with s. 101.149 (2) and (3), Stats., in a dwelling serving as a tourist rooming house, for which initial construction commenced before June 1, 1980.

**Note:** Tourist rooming house has the meaning as given under s. DHS 195.03 (20) which reads: "Tourist rooming house" means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleep accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under ch. DHS 197.

**Note:** Section 101.149 (2) (b), Stats., reads: If a unit is not part of a multiunit building, the owner of the residential building need not install more than one carbon monoxide detector in the unit.

(b) A carbon monoxide detector is not required to be provided under the requirements of this chapter in a dwelling that meets the exemption under s. 101.647 (3) (a), Stats.

**Note:** Section 101.647 (3) (a), Stats., reads: The owner of a dwelling shall install a functional carbon monoxide detector in the basement of the dwelling and on each floor level except the attic, garage, or storage area of each dwelling unit. A carbon monoxide detector wired to the dwelling's electrical wiring system shall have a backup battery power supply. Except as provided under par. (b), the occupant of the dwelling unit shall maintain any carbon monoxide detector in that unit. This paragraph does not apply to the owner of a dwelling that has no attached garage, no fireplace, and no fuel-burning appliance.

SECTION 14. Comm 28.04 is created to read:

**Comm 28.04 Carbon monoxide detectors.** Carbon monoxide detectors shall be installed and maintained in accordance with s. 101.647 (2), (3) (a) and (b) and (6), Stats., in a dwelling, for which initial construction commenced before June 1, 1980.

**Note:** Section 101.647 (2), (3) (a) and (b) and (6), Stats., reads:

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

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

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

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

**Note:** The Uniform Dwelling Code under s. Comm 21.097 specifies installation and maintenance requirements for carbon monoxide detectors in one- and 2-family dwellings constructed on or after June 1, 1980. The uniform dwelling code also reflects the installation and maintenance requirements specified in s. 101.647 (2), (3) (a) and (b) and (6) Stats.

**END**

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**EFFECTIVE DATE**

Pursuant to s. 227.22 (2) (a), Stats., these rules shall take effect February 1, 2011.

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