

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 08-085

RULE NO.: Comm 21.095 and 62.1200

RELATING TO: Carbon Monoxide Alarms

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

The proposed rules implement the mandates imposed by 2007 Wisconsin Act 205. The Act establish requirements for the installation and maintenance of carbon monoxide alarms in buildings accommodating residential type occupancies where people sleep or lodge, excluding hospitals and nursing homes. The department does not believe that the proposed rules will increase the effect on small businesses over 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.

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RULE REPORT

Department of Commerce

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Contact person for substantive questions:

Contact person for internal processing:

Name James Quast

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Title Program Manager

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Telephone Number (608) 266-9292

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1. Basis and purpose of the proposed rule.

The rules establish minimum requirements for the installation and maintenance of carbon monoxide alarms in buildings accommodating residential type occupancies where people sleep or lodge, excluding hospitals and nursing homes, that reflect the statutory mandates of 2007 Wisconsin Act 205.

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

Under various provisions of chapter 101, Stats., the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment and adopts rules that establish uniform, statewide standards for the construction of 1- and 2-family dwellings. 2007 Wisconsin Act 205 specifically directs the Department to address carbon monoxide alarms involving these types of buildings.

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

No changes were made to the fiscal estimate and only clarification and grammatical changes were made to the rule analysis.

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

Clearinghouse Rule Number: 08-085		Hearing Location: Madison	
Rule Number: Comm 21.095 and 62.1200		Hearing Date: October 14, 2008	
Relating to: Carbon Monoxide Alarms			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
speaker #1	Jeff Wiswell, Public Affairs Counsel Apartment Association South Central Wisconsin Madison	<p>Believes that there are good reasons for the adoption of a carbon monoxide law.</p> <p>Is pleased that the type of power source is not dictated further for existing construction.</p> <p>Is comfortable with the statutory exemptions, allowing the omission of carbon monoxide alarms when there are no garages and the fuel burning appliances are sealed combustion and under warranty.</p> <p>Concerned about some of the specificity aspects of the location of the carbon monoxide alarms as mandated by the legislation. (Did not elaborate with any details.)</p>	Support noted.
written	David Bloom Wisconsin State Fire Chiefs Association Madison	Registered in favor of the proposed rules.	Support noted.
written	Gary Goyke Wisconsin Rental Housing Legislative Council, Madison	Requests to be actively involved in the development of the permanent rule.	The proposed permanent rule basically reflects the emergency rule which implements 2007 Wisconsin Act 205. The permanent rule does clarify a few issues of the Act, but the substantive provisions of the rules are established by the Act.
written	David Lind, Fire Marshall North Shore Fire Dept. Bayside	<p>Raises the question as to how will the proposed carbon monoxide legislation be enforced.</p> <p>Suggests that language as a note should be added to address where and where not to install the devices.</p> <p>Asks who will enforce the installation and inspection in existing buildings.</p> <p>Asks whether testing language will be added, including replacement of batteries on a regular basis, such as yearly.</p>	<p>For new residential construction, requirements will be checked through plan review and field inspection.</p> <p>The law and manufacturer's instructions address where to install the alarms; where not to install the alarms is dependent upon variables including the selection of the alarms and changing technology.</p> <p>The department is working with the Comm 14 Fire Prevention Council to develop an inspection strategy to coincide with yearly fire inspections.</p> <p>It does not appear to be prudent to dictate specific testing and battery provisions in light of the various alarm technologies available.</p>

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	Lind continued	Supports the overall life safety purposes of the legislation.	Support noted.
written	Brad Boycks, Director of Government Affairs Wisconsin Builders Association Madison	Expresses concern about the requirements for interconnected and hardwired CO detectors that expand beyond that spelled out in 2007 Wisconsin Act 205 which also recognized plug in detectors.	The more specific requirements regarding carbon monoxide alarm power sources and interconnection were established under provisions of ss. 101.02 (15) (a) and (j) and 101.63 (1), Stats. Section 101.02 (15) (a) and (j), Stats., grants the department the ability to establish construction and maintenance standards that will protect the health, safety and welfare of occupants in public buildings and places of employment. Section 101.63 (1), Stats., grants the department the authority to establish construction standards for one- and 2- family dwellings and components thereof. In most cases, carbon monoxide alarms for dwelling unit sleeping areas can be accomplished by using combination smoke/carbon monoxide alarm devices. Smoke alarms are all ready required to be hard-wired and interconnected within dwelling units.
written	Daniel Gengler, Chairperson Wisconsin Alliance for Fire Safety (email)	Registers in full support of the language.	Support noted.
written	Jeff Wiswell, Public Affairs Counsel Apartment Association South Central Wisconsin Madison	In noting the differences in the installation provisions for smoke detectors under s. 101.145 (4), Stats., and that for carbon monoxide alarms under 2007 Wisconsin Act 205, suggests that the department call upon the Legislature to revisit the area of the installation of alarms to eliminate any possible confusion for all parties.	The department will provide assistance to the Legislature if and when requested.
written	Randall Dahmen, PE Waunakee	Raises several questions and asks for clarification concerning the location of carbon monoxide alarms as directed under s. 101.149 (2) (a), Stats.,: <ul style="list-style-type: none"> • Subds. 2. and 3., Asks whether the reference to “adjacent units” includes those units above or below a unit that contains a fuel burning appliance. • Asks how is the 15 feet measured under subds. 2. and 3 relative to dwelling units. 	“Subdivision 2. does not make a reference to adjacent units”. The final rule clarifies that adjacent applies to units on the same floor level. The 15-foot distance relates to the alarm being within 15 feet of each sleeping area within the dwelling unit, not the location of one dwelling unit in relation to other dwelling units.

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	Dahmen continued	<ul style="list-style-type: none"> • Subds. 4. and 5., Asks whether the reference to 75 feet involved other floors above or below the unit. <p>Suggests that duplicate rules be placed also in chapter Comm 64 since only HVAC designer truly know if a furnace is to be open fuel burning based upon their final HVAC design.</p> <p>Asks that clarification be provided relative to the installation responsibility of the owner versus the designer submitting the plans.</p> <p>Provides a copy of New York City's ordinance or information relative to carbon monoxide alarms.</p>	<p>Subdivision 4., specifically states within the room that has a fuel-burning appliance. Comm 62.1200(2)(a)3. has been clarified that the measurement is along the hallway from unit's door.</p> <p>The installation of carbon monoxide alarms is required for all types of fuel burning appliances, not just furnaces. For new construction, carbon monoxide alarms are required for all fueling burning furnaces, even sealed-combustion types. See Comm 62.1200(2). Duplicate rules are contrary to the required administrative rule drafting format.</p> <p>Statutorily the building owner is ultimately responsible relative to code compliance; this is the same as for any provision in the building codes.</p> <p>Information acknowledged.</p>

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 08-085

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RELATING TO: Carbon Monoxide Alarms

Agency contact person for substantive questions.

Name: James Quast

Title: Program Manager

Telephone No. (608) 266-9292

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

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Relating to: Carbon Monoxide Alarms

1. Statutory Authority

a. The more stringent requirements regarding carbon monoxide alarm power sources were established under 101.02 (15) (a) and (j) and 101.63 (1), Stats. Section 101.02 (15) (a) and (j), Stats., grants the department the ability to establish construction and maintenance standards that will protect the health, safety and welfare of occupants in public buildings and places of employment. Section 101.63 (1), Stats., grants the department the authority to establish construction standards for one- and 2- family dwellings and components thereof.

2. Form, Style and Placement in Administrative Code

- a. The department prefers to combine the effect on business with the section dealing with analysis, thereby, placing it in context.
- b. A “cabin” or a “cottage” is a type of dwelling. The rental of a cabin or cottage is to the exclusion of others, similar to that of an apartment rental unit. The proposed construction of a new one- and 2- family dwelling falls under the scope of chapters Comm 20 to 25.

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

a. The rules of the dwelling code, chs. Comm 20 to 25 apply prospectively to the construction of new one- and 2- family dwellings. The application of the dwelling code is statutorily limited to structures constructed on or after December, 1978. [s. 101.615 (intro.), Stats.]

d. The devices by the UL standard 2034 and the industry are referred to as “alarms”.

e. The installation of carbon monoxide alarms without the exceptions for the construction of new one- and 2- family dwellings serving as tourist rooming houses is proposed under the department’s statutory authority of s. 101.63 (1), Stats. The statutory exceptions under s. 101.149 (5) are applicable to existing tourist rooming houses.