The Wisconsin Department of Commerce adopts an order to renumber Comm 66.0911; to amend Comm 20.24 (1) and (2); and to create s. Comm 21.095, Comm 20.24 Table 20.24-14, Comm 62.1200, Comm 62.3500 (3) (e), Comm 62.3500 (3) Note, Comm 66.0911 (title) and Comm 66.0911 (2), relating to carbon monoxide alarms and affecting small business.

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Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: ss. 101.02 (15) and 101.63 (1), Stats., and s. 101.149, Stats., as created by 2007 Wisconsin Act 205.

2. Statutory Authority

Statutory Authority: ss. 101.02 (1) and (15) (a) and 101.63 (1), Stats., and s. 101.149, Stats., as created by 2007 Wisconsin Act 205.

3. Related Statute or Rule

Statutes: ss. 101.12 (1), Stats.,
Administrative Rules: Chapters Comm 60-66, Wisconsin Commercial Building Code
Chapters Comm 20-25, Uniform Dwelling Code

4. Explanation of Agency Authority

Under the statutes cited, 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.

5. Summary of Proposed Rules

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. Specifically, the rules would:

For new tourist rooming houses (cabins under the scope of Uniform Dwelling Code) (October 1, 2008), Comm 21.095

- Require the installation of carbon monoxide alarms where any type of fuel burning appliances are installed.
- Require the carbon monoxide alarms to be continuously powered by the building's electrical service with battery backups.

For new commercial buildings: (October 1, 2008),

- Require the installation of carbon monoxide alarms where any type of fuel burning appliances are installed. Comm 62.1200 (2) (a)
- Require the carbon monoxide alarms to be continuously powered by the building's electrical service with battery backups. Comm 62.1200 (2) (c)

For existing commercial buildings (Buildings existing on October 1, 2008 or reviewed and receiving department plan approval under the rules effective prior to October 1, 2008)

- Require the installation of carbon monoxide alarms by April 1, 2010.
- Do not dictate the type of power sources for the carbon monoxide alarms, thereby allowing batteries, electrical outlet plug-ins or wired to the building's electrical service.
- Allow the omission of carbon monoxide alarms provided there are no attached garages and all of the fuel burning appliances are of sealed combustion type either under warranty or annually inspected for carbon monoxide emissions. Comm 62.1200 (2) (a) 4.

The rules require carbon monoxide alarms to be listed and labeled identifying conformance to UL 2034, Underwriters Laboratories Inc, Standard for Safety Single and Multiple Station Carbon Monoxide Alarms.

Under the federal Americans with Disabilities Act, ADA, and the federal Fair Housing Law certain carbon monoxide alarms may be required to have both audible and visual alarm features.

Owners of existing tourist rooming houses will need to install and maintain carbon monoxide alarms in accordance with s. 101.149 (2) and (3), Stats., by April 1, 2010.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

An internet-based search of code of federal regulations and the federal register did not indentify any federal requirements for the installation and maintenance of carbon monoxide alarms in residential buildings.

7. Comparison with Rules in Adjacent States

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

- Illinois under Public Act 094-0741, the Carbon Monoxide Alarm Detector Act, has required the installation of carbon monoxide alarms in all occupancies and structures which have sleeping rooms since January 1, 2007.
- Iowa requires the installation of carbon monoxide alarms in foster care facilities.

- Michigan has not enacted any carbon monoxide alarm regulations at this time.
- 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 rules the Department reviewed the language of 2007 Wisconsin Act 205 in conjunction with the Department's broad authority under ss. 101.02 (15) and 101.63 (1), Stats., to protect public health and safety regarding the construction of public buildings, places of employment and one- and two- family dwellings to be used as tourist rooming houses. The current administrative rules for the installation of fire alarms (smoke detectors) were used as a model for these proposed rules pertaining to carbon monoxide alarms. The Department also analyzed the complexities of compliance under several scenarios where fuel burning appliances are added or replaced during the life of the building, such as residential condominiums.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The proposed rules implement mandates imposed by 2007 Wisconsin Act 205. The Act affects the owners of commercial buildings where people sleep or lodge and tourist room houses (rental cabins) where fuel burning appliances are installed. The types of commercial buildings affected include apartment buildings, condominiums, hotels, motels, bed and breakfast establishments, fraternities, sororities, dormitories, convents, seminaries, community based residential facilities, and home shelters. The department does not believe that the rules will increase the effect on small businesses over 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 ranges in from $65 to $85 and $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 to be prepared.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this proposed rulemaking will remain open until October 24, 2008. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or email at jim.quast@wisconsin.gov.

* * * *

SECTION 1. Comm 20.24 (1) and (2) are amended to read:

Comm 20.24 (1) CONSENT. Pursuant to s. 227.21 (2), Stats., the attorney general ~~and the revisor of statutes have~~ has consented to the incorporation by reference of the standards listed in Tables 20.24-1 to ~~20.24-12~~ 20.14-14.

(2) ADOPTION OF STANDARDS. The standards referenced in Tables 20.24-1 to ~~20.24-12~~ 20.14-14 are incorporated by reference into this chapter.

Note: Copies of the adopted standards are on file in the offices of the department and the legislative reference bureau. Copies of the standards may be purchased through the respective organizations listed in Tables 20.24-1 to ~~20.24-12~~ 20.14-14.

SECTION 2. Comm 20.24 Table 20.24-14 is created to read:

Table 20.24-14

UL	Underwriters Laboratories, Inc 333 Pfingsten Road Northbrook, IL 60062-2096
Standard Reference Number	**Title**
2034-2005	Single and Multiple State Carbon Monoxide Alarms

SECTION 3. Comm 21.095 is created to read:

Comm 21.095 Carbon monoxide alarms. (1) (a) Listed and labeled carbon monoxide alarms with battery secondary power supplies shall be installed and maintained in dwellings to be utilized as licensed tourist rooming houses and which contain fuel-burning appliances in accordance with s. 101.149 (2) and (3), Stats.

Note: Section 101.149 (2) and (3), Stats., reads:

(2) INSTALLATION REQUIREMENTS. (a) Except as provided in par. (b), the owner of a residential building shall install a carbon monoxide detector in all of the following places not later than the date specified under par. (c):

1. In the basement of the building if the basement has a fuel-burning appliance.
2. Within 15 feet of each sleeping area of a unit that has a fuel-burning appliance.
3. Within 15 feet of each sleeping area of a unit that is immediately adjacent to a unit that has a fuel-burning appliance.
4. In each room that has a fuel-burning appliance and that is not used as a sleeping area. A carbon monoxide detector shall be installed under this subdivision not more than 75 feet from the fuel-burning appliance.
5. In each hallway leading from a unit that has a fuel-burning appliance, in a location that is within 75 feet from the unit, except that, if there is no electrical outlet within this distance, the owner shall place the carbon monoxide detector at the closest available electrical outlet in the hallway.

(b) 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.

(c) 1. Except as provided under subd. 2., the owner of a residential building shall comply with the requirements of this subsection before the building is occupied.

2. The owner of a residential building shall comply with the requirements of this subsection not later than April 1, 2010, if construction of the building was initiated before October 1, 2008, or if the department approved the plans for the construction of the building under s. 101.12, Stats., before October 1, 2008.

(d) Any carbon monoxide detector that bears an Underwriters Laboratories, Inc., listing mark or similar mark from an independent product safety certification organization satisfies the requirements of this subsection.

(e) The owner shall install every carbon monoxide detector required by this subsection according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(3) MAINTENANCE REQUIREMENTS. (a) The owner of a residential building shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

(b) An occupant of a unit in a residential building may give the owner of the residential building written notice that a carbon monoxide detector in the residential building is not functional or has been removed by a person other than the occupant. The owner of the residential building shall repair or replace the nonfunctional or missing carbon monoxide detector within 5 days after receipt of the notice.

(c) The owner of a residential building is not liable for damages resulting from any of the following:

1. A false alarm from a carbon monoxide detector if the carbon monoxide detector was reasonably maintained by the owner of the residential building.

2. 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 or the result of a faulty alarm that was reasonably maintained by the owner as required under par. (a).

(b) For the purposes of this section:

1. "Fuel-burning appliance" means a device that is permanently installed in a dwelling and burns fossil-fuel or carbon based fuel where carbon monoxide is a combustion by-product, including stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, heaters, fireplaces and stoves.

2. "Tourist rooming house" has the meaning as given under s. HFS 195.03 (20).

Note: Section HFS 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. HFS 197.

(2) Carbon monoxide alarms shall be wired to the dwelling's electrical service.

(3) Carbon monoxide alarms within a dwelling unit shall be interconnected so that activation of one alarm will cause activation of all alarms within the dwelling unit.

(4) Carbon monoxide alarms shall conform to UL 2034.

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

Note: Section 101.149 (8), Stats., reads:

(8) PENALTIES. (a) If the department of commerce or the department of health and family services determines after an inspection of a building under this section or s. 254.74 (1g) that the owner of the building has violated sub. (2) or (3), the respective department shall issue an order requiring the person to correct the violation within 5 days or within such shorter period as the respective department determines is necessary to protect public health and safety. If the person does not correct the violation within the time required, he or she shall forfeit $50 for

each day of violation occurring after the date on which the respective department finds that the violation was not corrected.

(b) If a person is charged with more than one violation of sub. (2) or (3) arising out of an inspection of a building owned by that person, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture under par. (a).

(c) Whoever violates sub. (4) is subject to the following penalties:

1. For a first offense, the person may be fined not more than $10,000 or imprisoned for not more than 9 months, or both.

2. For a 2nd or subsequent offense, the person is guilty of a Class I felony.

SECTION 4. Comm 62.1200 is created to read:

Comm 62.1200 Carbon monoxide alarms. These are department rules in addition to the requirements in IBC chapter 12:

(1) DEFINITIONS. In this section:

(a) "Dwelling unit" has the meaning as given in s. 101.61 (1), Stats.

Note: Section 101.61 (1) reads: "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(b) "Fuel-burning appliance" means a device that is permanently installed in a building and burns fossil-fuel or carbon based fuel where carbon monoxide is a combustion by-product, including stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, heaters, fireplaces and stoves.

(c) "Residential building" has the meaning as given in s. 101.149 (1) (b), Stats.

Note: Section 101.149 (1) (b) reads: "Residential building" means a tourist rooming house, a bed and breakfast establishment, or any public building that is used for sleeping or lodging purposes. "Residential building" does not include a hospital or nursing home.

(d) "Sealed combustion appliance" means a listed appliance that acquires all air for combustion through a dedicated sealed passage from the outside to a sealed combustion chamber and all combustion products are vented to the outside through a separate dedicated sealed vent.

(e) "Sleeping area" has the meaning as given in s. 101.145 (1) (b), Stats.

Note: Section 101.145 (1) (b) reads: "Sleeping area" means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(2) INSTALLATION. (a) 1. Listed and labeled carbon monoxide alarms shall be installed at locations specified in s. 101.149 (2), Stats., and maintained in accordance with s. 101.149 (3), Stats., in buildings, including buildings existing on October 1, 2008, which are

residential buildings or include residential buildings, and contain fuel-burning appliances, except as provided in subd. 4.

Note: Section 101.149 (2) and (3), Stats., reads:

(2) INSTALLATION REQUIREMENTS. (a) Except as provided in par. (b), the owner of a residential building shall install a carbon monoxide detector in all of the following places not later than the date specified under par. (c):

1. In the basement of the building if the basement has a fuel-burning appliance.

2. Within 15 feet of each sleeping area of a unit that has a fuel-burning appliance.

3. Within 15 feet of each sleeping area of a unit that is immediately adjacent to a unit that has a fuel-burning appliance.

4. In each room that has a fuel-burning appliance and that is not used as a sleeping area. A carbon monoxide detector shall be installed under this subdivision not more than 75 feet from the fuel-burning appliance.

5. In each hallway leading from a unit that has a fuel-burning appliance, in a location that is within 75 feet from the unit, except that, if there is no electrical outlet within this distance, the owner shall place the carbon monoxide detector at the closest available electrical outlet in the hallway.

(b) 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.

(c) 1. Except as provided under subd. 2., the owner of a residential building shall comply with the requirements of this subsection before the building is occupied.

2. The owner of a residential building shall comply with the requirements of this subsection not later than April 1, 2010, if construction of the building was initiated before October 1, 2008, or if the department approved the plans for the construction of the building under s. 101.12, Stats., before October 1, 2008.

(d) Any carbon monoxide detector that bears an Underwriters Laboratories, Inc., listing mark or similar mark from an independent product safety certification organization satisfies the requirements of this subsection.

(e) The owner shall install every carbon monoxide detector required by this subsection according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(3) MAINTENANCE REQUIREMENTS. (a) The owner of a residential building shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

(b) An occupant of a unit in a residential building may give the owner of the residential building written notice that a carbon monoxide detector in the residential building is not functional or has been removed by a person other than the occupant. The owner of the residential building shall repair or replace the nonfunctional or missing carbon monoxide detector within 5 days after receipt of the notice.

(c) The owner of a residential building is not liable for damages resulting from any of the following:

1. A false alarm from a carbon monoxide detector if the carbon monoxide detector was reasonably maintained by the owner of the residential building.

2. 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 or the result of a faulty alarm that was reasonably maintained by the owner as required under par. (a).

2. The installation of carbon monoxide alarms in accordance with s. 101.149 (2) and (3), Stats., shall be throughout the entire building where a portion of the building includes a residential building.

3. The 75-foot installation limit specified under s. 101.149 (2) (a) 5., Stats., shall be measured from the door of the unit.

4. The installation of carbon monoxide alarms is not required in buildings if construction of the building was initiated before October 1, 2008, or if the department approved the plans for the construction of the building under s. Comm 61.30, provided the building does not have an attached enclosed garage and either of the following circumstances applies:

a. All of the fuel-burning appliances in the building are of a sealed-combustion type that are covered by the manufacturers' warranties against defects.

b. All of the fuel-burning appliances in the building are of sealed-combustion type that are inspected in accordance with sub. (3) or rules promulgated by the department of health services under s. 254.74 (1) (am), Stats.

(b) 1. Carbon monoxide alarms shall conform to UL 2034.

2. Carbon monoxide alarms shall be listed and labeled identifying conformance to UL 2034.

(c) Carbon monoxide alarms to be installed in a building shall be wired to the building's electrical service and include battery secondary power supplies, if either of the following conditions applies:

1. Plans for the construction of the building were submitted for review under s. Comm 61.30 on or after October 1, 2008.

2. Construction of the building was initiated on or after October 1, 2008, if plans were not required to be submitted and approved under s. Comm 61.30.

(d) Carbon monoxide alarms to be installed within a dwelling unit shall be interconnected so that activation of one alarm will cause activation of all alarms within the dwelling unit, if either of the following conditions applies:

1. Plans for the construction of the building were submitted for review under s. Comm 61.30 on or after October 1, 2008.

2. Construction of the building was initiated on or after October 1, 2008, if plans were not required to be submitted and approved under s. Comm 61.30.

(3) INSPECTION OF SEALED COMBUSTION APPLIANCES. (a) The owner of a building shall be responsible for arranging the inspection of sealed combustion appliances and the vents and chimneys serving the appliances under subd. (2) (a) 4. b.

(b) Pursuant to subd. (2) (a) 4. b., the inspection of the sealed combustion appliances, vents and chimneys shall be for the purpose of determining carbon monoxide emission levels.

(c) Pursuant to subd. (2) (a) 4. b., the inspection of the sealed combustion appliances, vents and chimneys shall be performed at least once a year.

(d) For the propose of subd. (2) (a) 4. b., the inspection of the sealed combustion appliances, vents and chimneys shall be performed by an individual who holds a certification issued under ch. Comm 5 as an HVAC qualifier.

(e) If upon inspection the carbon monoxide emissions from a fuel burning appliance, vent or chimney are not within manufacturer's specifications, the appliance may not be operated until repaired or carbon monoxide alarms are installed in accordance with s. 101.149 (2) and (3), Stats.

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

Note: Section 101.149 (8), Stats., reads:

(8) PENALTIES. (a) If the department of commerce or the department of health and family services determines after an inspection of a building under this section or s. 254.74 (1g) that the owner of the building has violated sub. (2) or (3), the respective department shall issue an order requiring the person to correct the violation within 5 days or within such shorter period as the respective department determines is necessary to protect public health and safety. If the person does not correct the violation within the time required, he or she shall forfeit $50 for each day of violation occurring after the date on which the respective department finds that the violation was not corrected.

(b) If a person is charged with more than one violation of sub. (2) or (3) arising out of an inspection of a building owned by that person, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture under par. (a).

(c) Whoever violates sub. (4) is subject to the following penalties:

1. For a first offense, the person may be fined not more than $10,000 or imprisoned for not more than 9 months, or both.

2. For a 2nd or subsequent offense, the person is guilty of a Class I felony.

SECTION 5. Comm 62.3500 (3) (e) is created to read:

Comm 62.3500 (3) (e) UL 2034 – 2005, Single and Multiple State Carbon Monoxide Alarms.

SECTION 6. Comm 62.3500 (3) Note is amended to read:

Comm 62.3500 (3) Note: ANSI/ASAE standards may be purchased from the American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085−9659.

ASTM standards may be purchased from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428−2959.

NFPA standards may be purchased from the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269−9101.

UL standards may be purchased for Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

Copies of the standards adopted under this section are on file in the offices of the department and the legislative reference bureau.

SECTION 7. Comm 66.0911 is renumbered Comm 66.0911 (1).

SECTION 8. Comm 66.0911 (1) (title) is created to read:

Comm 66.0911 Other requirements. (1) ELEVATOR RECALL.

SECTION 9. Comm 66.0911 (2) is created to read:

Comm 66.0911 (2) CARBON MONOXIDE ALARMS. This is a department rule in addition to the requirements in IEBC section 911: A building or a portion of a building changed to be or include a residential building as defined under s. 101.149 (1) (b), Stats., shall be provided with carbon monoxide alarms in accordance with s. Comm 62.1200.

(END)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

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