



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

Jim Doyle, Governor
Richard J. Leinenkugel, Secretary

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.: 09-072

RULE NO.: Comm 22.31 (2) (b)

RELATING TO: Approved Software to Show Compliance with Uniform Dwelling Code Thermal
Envelope Requirements

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,

Richard J. Leinenkugel
Secretary

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.: 09-072

RULE NO.: Comm 22.31 (2) (b)

RELATING TO: Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

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,

Richard J. Leinenkugel
Secretary



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Jim Doyle, Governor
Richard J. Leinenkugel, Secretary

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.: 09-072

RULE NO.: Comm 22.31 (2) (b)

RELATING TO: Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

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

Respectfully submitted,

Richard J. Leinenkugel
Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 09-072

Rule No.: Comm 22.31 (2) (b)

Relating to: Approved Software to Show compliance with Uniform Dwelling Code Thermal Envelope Requirements

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 rule is ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats. The purpose of the proposed rule is to amend a provision that requires a specific version of REScheck software be used to calculate compliance with the dwelling thermal envelope requirements in chapter Comm 22. The amendment is necessary because Version 4.1.0, and some subsequent versions, that are specified in s. Comm 22.31 (2) (b) do not meet nor support the requirements of Wisconsin's energy code. State-specific energy conservation provisions were not incorporated into REScheck software until Version 4.2.2 .

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 2-family dwellings. To fulfill this responsibility, the Department has promulgated this proposed rule to include the state-specific energy calculations and formulas in REScheck Version 4.2.2 to support chapter Comm 22 that became effective April 1, 2009.

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.: 09-072

RULE NO.: Comm 22.31 (2) (b)

RELATING TO: Approved Software to Show compliance with Uniform Dwelling Code Thermal Envelope Requirements

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 rule to amend Comm 22.31 (2) (b) alleviates confusion and miscalculations because designers, builders, product manufacturers and code officials use REScheck software, and could use the version currently specified in Comm 22.31 (2) (b). It will not have a significant impact on a substantial number of small businesses.

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.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 09-072

RULE NO.: Comm 22.31 (2) (b)

RELATING TO: Approved Software to Show compliance with Uniform Dwelling Code Thermal Envelope Requirements

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

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

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Comm 22.31 (2) (b)	Amendment No.
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Subject

Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

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

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
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
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FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Comm 22.31 (2) (b)

Amendment No. if Applicable

Subject

Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

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

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

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 emergency rule repeals code language requiring a specific version of REScheck software be used to show compliance with Uniform Dwelling Code thermal envelope requirements. Amending s. Comm 22.31 (2) (b) will not affect department revenue or expenditures.

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

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

Clearinghouse Rule Number: 09-072		Hearing Location: Madison, WI	
Rule Number: Comm 22.31 (2) (b)		Hearing Date: October 21, 2009	
Relating to: Approved software to show compliance with Uniform Dwelling Code thermal envelope requirements			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Speaker 1, Exhibit 4	Pat Stevens Wisconsin Builders Association 4868 High Crossing Blvd. Madison, WI 53704	<p>a. Requests restoring the offset allowed previously when a 90% efficiency furnace was used. A major concern is the costs associated with meeting the new energy code requirements reflected in REScheck – especially with how the energy code and REScheck deal with furnace efficiencies. Allowing credit for only 95% efficiency furnaces exceeds the International Energy Conservation Code (IECC) provisions.</p> <p>b. Recommends adding a provision to the energy code that indicates the following log homes meet the code provisions: <i>Log walls complying with ICC 4000 and with a minimum average wall thickness of 5" or greater shall be permitted in Zones 5-8 when overall window glazing is .31 U-factor or lower, minimum heating equipment efficiency of 90AFUE (gas) or 84AFUE (oil), and all other component requirements are met.</i> Minnesota and Montana have adopted this provision for log homes. Meeting the energy code requirements is quite costly for the log home industry.</p> <p>c. Requests the implementation date of the rule be delayed. The code authorizing the use of REScheck 4.1.0 to demonstrate compliance was in effect from April 1, 2009, until September 5, 2009, when the emergency rule became effective. Builders have entered into agreements to construct dwellings based on costs associated with using REScheck 4.1.0. If the rule moves forward, a delay should be allowed so these builders can complete their projects.</p>	<p>a. Disagree. When the department revised chapter Comm 22 effective April 1, 2009, it 1) continued to promote the use of 90% efficient furnaces and 2) simplified the use of REScheck when determining compliance with the UDC based on the home's insulation requirements per the 2006 International Energy Conservation Code (IECC). The 2009 IECC will eliminate the appliance efficiency trade-offs, and this may be reflected in the next edition of Comm 22. The department believes these energy-saving requirements should be maintained.</p> <p>b. Recommendation noted. Such a provision for log homes, however, is beyond the scope of this proposed rule change.</p> <p>c. Disagree. The emergency rule requiring Version 4.2.2 or better was in place as of September 5, 2009, and implementing a delay – allowing the use of Version 4.1.0 for a few months before returning to Version 4.2.2 – would create confusion and be problematic. Earlier versions of REScheck – those prior to Version 4.2.2 – are not consistent with the actual code requirements contained in the R-value tables in Comm 22. Builders who do not use REScheck have complied with the minimum insulation requirements set forth in Tables 22.31-1 and 22.31-4 and those applicable sections since April 1, 2009, when chapter Comm 22</p>

**DEPARTMENT OF COMMERCE
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			became effective. Many builders in Wisconsin are using REScheck versions 4.2.2 or 4.3.0, (before and after September 5, 2009) and are building homes in compliance with the intent of the UDC.
Speaker 2, Exhibit 3	Pattie Stone Metropolitan Builders Association N16 W23321 Stone Ridge Drive Waukesha, WI 53188	<p>a. Requests creating a new version of REScheck that allows an accommodation for a 90% efficient furnace as per Comm 22.31 (3). Under REScheck 4.2.2 no offsets are available for heat-loss calculation unless the furnace meets the 94% efficient threshold. This is not the case with the current code that allows an accommodation when a furnace reaches 90% efficiency.</p> <p>b. Recommends delaying the implementation of the emergency rule. Builders relied on the code language that allowed REScheck 4.1.0 to show compliance when bidding jobs between April 2, 2009, and September 5, 2009. All of these jobs were bid at substantially lower figures – \$2,500 to \$8,000 – than the value that they will actually cost to complete according to REScheck 4.2.2. An implementation delay would allow these builders to complete these projects and not be unduly harmed by this error.</p>	<p>a. Disagree. Same response as to Speaker #1, Comment a.</p> <p>b. Disagree. Same response as to Speaker #1, Comment c.</p>
Exhibit 1	Michael Coello 2122 S. West Ave. Waukesha, WI 53189	Requests a delay in the implementation of the rule. Compliance under REScheck 4.2.2 compared to 4.1.0 increases the costs of a structure from \$2,500 to \$8,000. This amount is primarily due to a significant increase in insulations costs (mainly the foundation) to show compliance with REScheck 4.2.2's heat-loss calculations. Contractors used REScheck 4.1.0 to show compliance when bidding jobs between April 2 and September 5, 2009. These jobs were bid at figures lower than the value that they will actually cost to complete with the implementation of this rule. Delaying implementation will accommodate those projects and ensure that builders are not unduly harmed by this error. Comments similar to Speaker 2, b., Exhibit 3.	Disagree. Same response as to Speaker #1, Comment c.

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

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Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Exhibit 2	Ann Rodrigues David & Goliath Builders, Inc./Avid Homes, LLC 1177 Quail Court Pewaukee, WI 53072	Requests a delay in the implementation of the rule. Comments similar to Speaker 2, b., Exhibit 3.	Disagree. Same response as to Speaker #1, Comment c.