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Scott McCallum, Governor
Brenda J. Blanchard, Secretary

June 11, 2001

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 00-159

RULE NO.: Chs. Comm 2, 5 and 20

RELATING TO: Uniform Dwelling Code Inspection Agencies

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,

Brenda J. Blanchard
Secretary

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 00-159

RULE NO.: Chs. Comm 2, 5 and 20

RELATING TO: Uniform Dwelling Code Inspection Agencies

- 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.**

Independent inspection firms that choose to take on the work now allowed under this code draft must meet the same reporting requirements as municipal inspectors because the code in question is a uniform statewide code. In selling this new program, the assumption has always been that inspections done by registered UDC inspection agencies will be identical in quality to those performed by municipalities.

- 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.**

Some independent inspection firms suggested that stricter insurance and reporting requirements be instituted for registered UDC inspection agencies. The department has declined to be more strict so as to encourage more agencies to enter the program. Also, no substantive reasons were given to include the stricter requirements.

- 3. Nature and estimated cost of preparation of any reports by small businesses.**

The preparation of inspection reports, etc. is an integral part of choosing to join the program. The requirements in this rule draft require registered UDC inspection agencies to make all reports available to the department for auditing purposes.

- 4. Nature and estimated cost of other measures and investments required of small businesses.**

There are no additional measures or investments required under these rules.

- 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.**

There would be considerable additional cost if the department were required to monitor the insurance coverage or the daily employment roster of registered UDC inspection agencies. These are the suggestions for stricter requirements that were received at public hearings.

- 6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.**

There were no methods suggested which would reduce the impact on small business.

DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE

Clearinghouse Rule No.: 00-159		Hearing Location: Not Applicable - Written Comments	
Rule Number: Chs. Comm 2, 5 and 20		Hearing Date: Not Applicable - Written Comments	
Relating to: Uniform Dwelling Code Inspection Agencies			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
1	Building Inspectors Assoc. of NE Wisconsin	<p>1. Since there could be numerous agencies working in one municipality, the proposed rules will not provide a uniform inspection program as required under state statutes.</p> <p>2. There will be no actual enforcement authority for the agency's corrective orders.</p> <p>3. There is an inherent conflict of interest because the homeowner is free to choose the most lenient inspector available.</p> <p>4. The municipalities that want state enforcement for dwelling construction may choose to opt out of the program if it is run according to this proposal.</p>	<p>1. Disagree. The one- and 2-family code specifies the number and types of inspections that must be performed. The uniformity of inspections will be based on the competency of the inspector(s) performing the inspections for compliance with the one-and 2-family code and on monitoring performed by the department.</p> <p>2. Disagree. In accordance with WI Statute sections 101.63 (6) and 101.66, the department has the authority to enforce against any builder, owner, inspector that does not comply with WI. Stat. chapter 101, subchapter II and any rules developed pursuant to this statute.</p> <p>3. Disagree. Although the homeowner may select any registered UDC inspection agency, the inspection agency will be responsible to comply with applicable state laws and rules. The department will monitor the activities of the inspection agencies.</p> <p>4. Agree. The municipalities of 2500 population or less have the right to opt out of the program at any time for <u>any</u> reason. [WI Statute s. 101.651 (2m)]</p>
2	Darin Pagen Northwinds Inspection LTD. Merrill, WI	<p>1. If the owner or contractor is responsible for obtaining a permit, it will be impossible to track who has or has not obtained one.</p> <p>2. There will be no legal clout to assure inspections are completed.</p>	<p>1. Disagree. The department will receive from the registered UDC inspection agencies copies of the permit applications and will record those in the department's database. The department will also perform field audits within municipalities served by licensed inspection agencies to determine whether the builders/owners are obtaining the required permits.</p> <p>2. Disagree. See comment under agency response No. 2., Exhibit No. 1.</p>

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2 (cont.)	Page1 (cont.)	<p>3. The proposed rules may actually cause municipalities to opt out of their current inspection programs.</p> <p>4. There is an inherent conflict of interest because a contractor could get an employee to be certified and inspect all of the employer's projects.</p> <p>5. People will not hire an inspector who finds problems that will cost money to correct.</p> <p>6. The state should contract with inspectors by municipality or by region to alleviate many of the problems with the current proposal.</p>	<p>3. Agree. See comment under agency response No. 4., Exhibit No. 1.</p> <p>4. Disagree. The example exhibits a conflict of interest. This arrangement would be prohibited by section Comm 5.10 (1) (a) 4. of the proposed rules.</p> <p>5. Disagree. Some people will obtain permits from "tough" inspection agencies because they know that they are doing their "job". There are also other factors considered during the hiring process such as initial cost of permit, availability and promptness in performing inspections and notification of required corrective actions.</p> <p>6. Disagree. Although the contracting approach was considered the "owner's/builder's choice" approach is being proposed because of the following factors:</p> <ul style="list-style-type: none"> a) Municipalities may opt in and out at any time thereby expanding and contracting the amount of work needing to be done by inspectors. b) The sites are scattered throughout the state c) Limited department resources are available to manage the contracts d) Some areas of the state would have a small volume of inspection activity <p>This proposal does not prohibit a municipality from pursuing a credential as a registered UDC Inspection Agency.</p>
3	Randy Voss City of Reedsburg	The rules should give priority to the nearest enforcing municipality to be the UDC Inspection Agency. This would serve as a reward to municipalities that are already enforcing the UDC and would avoid needless duplication.	Disagree. This would complicate the choice process. Municipalities already have the authority to work jointly with other municipalities to enforce the UDC. Also, this proposal does not prohibit a municipality from registering as a UDC Inspection Agency.

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4	Tim Joyce Self DeForest	<p>1. Submitted suggestion for change to proposed language under recreated section Comm 20.09 (5) (b) 1. d. regarding the requirement to enter the name and number of the licensed plumber on the permit.</p> <p>2. Suggests that language be added to chapter Comm 25 stating that, with few exceptions, a plumbing license is required when installing plumbing.</p>	<p>1. Agree. Suggested language change regarding permits will be included.</p> <p>2. The department will consider language regarding plumbing licenses in future rule change projects.</p>
5	Chris Dodge City of Janesville	<p>1. The proposed rules are lacking because there is no test or exam required to run a UDC Inspection Agency</p> <p>2. The proposed rules are lacking because there is no requirement for continuing education for the Agency owner.</p> <p>3. The proposed rules are lacking because there is no requirement for financial responsibility or insurance.</p>	<p>1. Disagree. The specialized knowledge needed for inspectors is ensured because UDC inspectors are required to take an exam before obtaining that credential.</p> <p>2. Disagree. The absence of a continuing education requirement reflects the fact that the specialized knowledge is held by the certified UDC inspectors.</p> <p>3. Disagree. No other certified inspectors Safety and Buildings authorizes are required to carry liability insurance.</p>
6	Brian Walter City of Neenah	<p>4. The proposed rules are lacking because there is no apparent legal follow-up for cases of noncompliance with written orders.</p> <p>5. The proposed rules are lacking because there are no provisions preventing conflicts of interest.</p> <p>1. Merely certifying UDC Inspection Agencies is not the same as providing inspection services as required under the statutes.</p>	<p>4. Disagree. See comment under agency response No. 2., Exhibit No. 1.</p> <p>5. Disagree. Section Comm 5.10 (1) (a) 4. of the proposed rules addresses conflict of interest.</p> <p>1. The proposal does more than merely registering UDC Inspections Agencies. The proposed rules include a specific responsibility that the owner/builder must get a permit from such agencies and that they use that same agency during the complete plan review, inspection and occupancy process. Also, the proposed UDC inspection agencies will have responsibilities not unlike those of municipalities engaged in administration of the UDC.</p>

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6 (cont.)	Walter (cont.)	<p>2. How will the homeowner know if the town, county, state, or anyone is enforcing the code? A home could be built with no one ever informing the owner of the need to hire an inspector.</p> <p>3. The Agencies have no apparent enforcement power. Will the department take legal action all over the state on behalf of the Agencies?</p> <p>4. Can the owner or contractor "fire" or replace the Agency at any time? Who would know if the original Agency is not replaced?</p>	<p>2. Through education and monitoring actions of the department and it's agents. As is done in municipalities now the owner would contact the county zoning, municipal/town clerk, realtor, friend, etc to see if they need a permit or rely on the builder/contractor to get the appropriate permits. If they do not find out through these channels that they need a permit there is the drive-by check by the registered UDC Inspection Agency or state inspector.</p> <p>3. Disagree. As with a municipal inspector, they have the authority and responsibility to notify the permittee of code violations. If the owner/builder does not voluntarily make the corrections, the agency is responsible to refer the inspection violation to the department for enforcement</p> <p>The department has the authority to gain conformance as identified in comments under agency response No. 2., Exhibit No. 1.</p> <p>4. Yes. When the new agency submitted a duplicate application the department would know. Other avenues would be department notification by the agency that they were fired and field audits. A provision will be added to the code to require that inspection agencies report to the department when they have been dismissed by the owner or builder.</p>
7	Robert Blankenheim Independent Inspections, LTD Waukesha, WI	<p>The proposal cannot work in its current form because of the following:</p> <p>1. The Agencies should be required to be insured just as the contractors are.</p>	<p>1. Disagree. See comment under agency response No. 3., Exhibit No. 5.</p>

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7 (cont.)	Blankenheim (cont.)	<p>2. Agencies should be required to submit certification numbers of the inspectors they employ. Otherwise, the agency may not have qualified staff.</p> <p>3. There has been no mention of the department monitoring Agency activities.</p> <p>4. Where will the applicant view inspection records, view job files or apply for the permit? With no penalty provisions what is the incentive to comply with the code?</p> <p>5. Ignorance of local requirements, such as zoning, could lead to legal action against the agency for allowing a dwelling to be built in violation. This will not protect the homeowner.</p>	<p>2. Disagree. The registered UDC Inspection Agency is already, by rule, required to have the appropriately certified inspectors. Submitting a list of certified inspectors at the initial application phase does not necessarily mean that they will retain the individuals for any length of time.</p> <p>3. Disagree. The proposed rules, Comm 5.635 (4) (b) & (d), reflect the fact that a monitoring program will be implemented.</p> <p>4. The permits will be issued by the UDC Inspection Agencies and records will be maintained by those agencies. The applicant will obtain the permit and view the files at the agency's office. Language will be added to the rule proposal to specifically require that records be maintained and be made available to applicants.</p> <p>Regarding penalties, see comment under agency response No. 2., Exhibit No. 1.</p> <p>5. Zoning is a local issue. The state does not have authority to regulate local zoning requirements. It is the owner's responsibility to make sure that they comply with the most restrictive requirements of all applicable state and local regulations.</p>
8	Building Inspectors Assoc. of SE Wisconsin	The Association is opposed to the rule as currently written and recommends delaying adoption of the rule until the concerns of the Building Inspector Associations throughout Wisconsin have been addressed.	Noted.



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chs. Comm 2, 5 and 20

Relating to: Uniform Dwelling Code Inspection Agencies

Clearinghouse Rule No.: 00-159

The Wisconsin Department of Commerce proposes an order to repeal ss. Comm 2.34 (3), 20.06 (1) (intro.), 20.09 (5) (c) Note, and 20.11 (1);

to renumber ss. Comm 2.34 (4) to (8), 5.02 - Table 5.02 lines 37 to 65, 5.06 - Table 5.06 lines 37 to 65, 20.02 (1) to (5), and 20.06 (1) (a) to (c);

to renumber and amend ss. Comm 20.02 (intro.), and 20.11 (intro.);

to amend ss. Comm 2.34 (1), 20.06 (title), 20.09 (1) and (2), 20.09 (4) (intro.) and (5) (a), 20.09 (5) (b) 2., 20.09 (5) (c), 20.09 (6) (intro.) and (b), 20.10 (1) (intro.), 20.10 (1) (c) 1. and 2. a., and 20.11 (2);

to repeal and recreate ss. Comm 2.34 (2), 20.06 (1) (c), 20.06 (3), 20.08, 20.09 (3), 20.09 (5) (b) 1. d., and 20.10 (1) (a);

and to create ss. Comm 2.34 (2), 5.02 - Table 5.02 line 37, 5.06 - Table 5.06 line 37, 5.635, 20.02 (1) (b), 20.06 (1) (a), 20.07 (60m), and 20.09 (8).

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Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

Statutes Interpreted: s. 101.651 (2m), Stats.

The last budget bill, 1999 Wisconsin Act 9, created s. 101.651 (2m), Stats., which requires municipalities with less than 2,500 population to adopt and enforce the Uniform Dwelling Code (UDC) unless they take certain specified steps. However, there is no time limit specified for these steps to be taken. Section 101.651 (3) (b), Stats., was created at the same time which requires the department to enforce the UDC and to provide inspection services in those municipalities that have not otherwise provided for enforcement and inspection services under 101.651 (2m) (intro.) and (a), Stats., or that have not adopted an ordinance forgoing all enforcement and inspection as allowed under s. 101.651 (2m) (b), Stats.

The department plans to enforce the UDC and provide inspection services in those municipalities through the use of UDC Inspection Agencies registered with the department. The UDC Inspection Agency would be responsible for the issuance of building permits and UDC seals, and the performance of plan reviews and dwelling inspections. The dwelling owner would be responsible for hiring the UDC Inspection Agency to enforce the UDC for that dwelling.

Treatment sections 5 to 10 of this rule have an earlier effective date than the remainder of the sections to allow the department to register these agencies prior to requiring a homeowner to use them to inspect his or her dwelling.

SECTION 1. Comm 2.34 (1) is amended to read:

Comm 2.34 (1) UNIFORM BUILDING PERMIT SEAL. A fee of \$25.00 shall be remitted to the department ~~or its agent~~ at the time of application for a Wisconsin Uniform Building Permit Seal. Municipalities or UDC inspection agencies administering the Uniform Dwelling Code shall purchase one \$25.00 permit seal for each new dwelling ~~falling within the scope of the Uniform Dwelling Code.~~

SECTION 2. Comm 2.34 (2) is repealed and recreated to read:

Comm 2.34 (2) DEPARTMENTAL INSPECTIONS. Where an employe of the department performs an on-site inspection related to the enforcement of the Uniform Dwelling Code as a result of a consumer complaint or a request by an individual in a municipality where permits are not issued and inspections are not performed, a fee may be assessed to the individual requesting the inspection determined in accordance with s. Comm 2.04 (2), with a minimum fee of \$120.00 per inspection, payable in advance to the department.

SECTION 3. Comm 2.34 (3) is repealed.

SECTION 4. Comm 2.34 (4) to (8) are renumbered Comm 2.34 (3) to (7).

SECTION 5. Comm 5.003 (48m) is created to read:

Comm 5.003 (48m) "UDC" means chs. Comm 20 to 25, the Wisconsin uniform dwelling code.

SECTION 6. Comm 5.02 Table 5.02 lines 37 to 65 are renumbered lines 38 to 66.

SECTION 7. Comm 5.02 Table 5.02 line 37 is created to read:

Table 5.02
FEES
(partial table)

	License, Certification or Registration Category	Type	Application Fee	Examination Fee	License, Certification or Registration Fee
37.	UDC Inspection Agency	Registration	\$10	NA	\$15

SECTION 8. Comm 5.06 Table 5.06 lines 37 to 65 are renumbered lines 38 to 66.

SECTION 9. Comm 5.06 Table 5.06 line 37 is created to read:

Table 5.06
EXPIRATIONS
(partial table)

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
37.	UDC Inspection Agency	2 years	Date of Issuance	NA

SECTION 10. Comm 5.635 is created to read:

Comm 5.635 UDC inspection agency. (1) GENERAL. No person may engage in or offer to engage in the activities of facilitating plan review, issuance of Wisconsin uniform building permits, or inspection of one- and 2-family dwellings in a municipality where the department has jurisdiction pursuant to s. 101.651 (3) (b), Stats., unless the person obtains a registration from the department as a registered UDC inspection agency.

Note: Section 990.01 (26), Stats., states that the term "person" includes all partnerships, associations and bodies politic or corporate.

(2) APPLICATION FOR REGISTRATION. A person applying for a UDC inspection agency registration shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and a registration fee in accordance with s. Comm 5.02, Table 5.02.

(3) QUALIFICATIONS FOR REGISTRATION. The person applying for a UDC inspection agency registration shall be the owner of the business, a partner in the business applying on behalf of a partnership, or the chairman of the board or chief executive officer applying on behalf of the corporation.

(4) RESPONSIBILITIES. A person who is responsible for facilitating plan review, issuance of Wisconsin uniform building permits and the inspections for one- and 2-family dwellings as a registered UDC inspection agency shall be responsible for all of the following:

(a) Utilizing persons appropriately certified under s. Comm 5.63 to review the plans, issue the permits and conduct the inspections.

(b) Making the records relative to the plan review, issuance of permits and inspections available to the department upon request.

(c) Providing inspection services for all inspections required under s. Comm 20.10.

(d) Cooperating with the department in any program monitoring, enforcement activities, and investigations.

(e) Following all procedures established by the department for UDC enforcement by inspection agencies.

(f) Reporting to the department in writing when the agency has been dismissed by the owner or builder.

(g) Making any records associated with their permit, plan review and inspection activities available to the permit holder upon request.

(5) RENEWAL. (a) A person may renew his or her registration as a UDC inspection agency.

(b) A UDC inspection agency registration shall be renewed in accordance with s. Comm 5.07.

SECTION 11. Comm 20.02 (1) to (5) are renumbered (2) to (6).

SECTION 12. Comm 20.02 (intro.) is renumbered 20.02 (1) (a) and amended to read:

Comm 20.02 Scope. (1) GENERAL. (a) The design, construction and installation provisions of ~~chapters Comm 20 to 25~~ shall this code apply to the ~~construction and inspection procedures used for~~ all new one- and 2-family dwellings, manufactured buildings for dwellings and newly constructed community-based residential facilities providing care, treatment and services for 3 to 8 unrelated adults.

SECTION 13. Comm 20.02 (1) (b) is created to read:

Comm 20.02 (1) (b) The enforcement provisions of this code apply in municipalities under any of the following conditions:

1. The municipality adopts this code in accordance with s. Comm 20.06.
2. The municipality meets the requirements under s. 101.651 (1) and (2m) (a) or (c), Stats.

Note: See s. Comm 20.06 for a reprint of s. 101.651 (1) and (2m), Stats.

SECTION 14. Comm 20.06 (title) is amended to read:

Comm 20.06 (title) Procedure for municipalities exercising jurisdiction.

SECTION 15. Comm 20.06 (1) (intro.) is repealed.

SECTION 16. Comm 20.06 (1) (a) to (c) are renumbered (1) (b) to (d).

SECTION 17. Comm 20.06 (1) (a) is created to read:

Comm 20.06 (1) (a) *General*. 1. Except as provided in ss. 101.651 (1) and (2m), Stats., cities, villages and towns shall exercise jurisdiction over the construction and inspection of new dwellings.

Note: Sections 101.651 (1) and (2m), Stats., read as follows.

101.651 Certain municipalities exempted. (1) DEFINITION. In this section, “municipality” means a city, village or town with a population of 2,500 or less.

(2m) EXEMPTION BY RESOLUTION. A municipality shall exercise jurisdiction over the construction and inspection of new one- and 2-family dwellings by enacting ordinances under s. 101.65 (1) (a) or shall exercise the jurisdiction granted under s. 101.65 (1) (a) jointly under s. 101.65 (1) (b), unless any of the following conditions are met:

(a) The municipality adopts a resolution requesting under sub. (3) (a) that a county enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a) throughout the municipality and that a county provide inspection services in the municipality to administer and enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a).

(b) The municipality adopts a resolution determining not to exercise jurisdiction over the construction and inspection of new one- and 2-family dwellings under 101.65 (1) (a), not to exercise jurisdiction jointly under s. 101.65 (1) (b), not to request under sub. (3) (a) that a county enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a) throughout the municipality and not to request under sub. (3) (a) that a county provide inspection services in the municipality to administer and enforce this subchapter or an ordinance enacted under s. 101.65 (1) (a).

(c) Under sub. (3) (b), the department enforces this subchapter or an ordinance enacted under s. 101.65 (1) (a) throughout the municipality and provides inspection services in the municipality to administer and enforce this subchapter or an ordinance under s. 101.65 (1) (a).

2. Municipalities intending to exercise jurisdiction shall, by ordinance, adopt this code in its entirety.

3. No additional requirements within the scope of this code may be adopted by a municipality unless approved by the department in accordance with s. Comm 20.20.

SECTION 18. Comm 20.06 (1) (c) (as renumbered) is repealed and recreated to read:

Comm 20.06 (1) (c) *Submission of ordinances and resolutions.* 1. 'Ordinances.' a. Municipalities intending to exercise jurisdiction shall submit all ordinances adopting this code to the department at the same time as the notice of intent.

b. The department shall review and make a determination regarding municipal intent to exercise jurisdiction over new dwellings within 15 business days of receipt of municipal ordinances adopting this code.

c. A municipality may appeal a determination by the department in accordance with the procedure under s. Comm 20.21 (2).

2. 'Resolutions.' Municipalities adopting a resolution under s. 101.651 (2m) (a) or (b), Stats., shall file a certified copy of the resolution with the department within 30 days of adoption.

3. 'Recision of ordinances or resolutions.' Municipalities that rescind an ordinance or a resolution under subd. 1. or 2. shall file a certified copy of the recision with the department within 30 days of adoption.

SECTION 19. Comm 20.06 (3) is repealed and recreated to read:

Comm 20.06 (3) DEPARTMENTAL JURISDICTION. In municipalities not adopting a resolution under s. 101.651 (2m), Stats., and not adopting an ordinance to enforce the code under s. Comm 20.06, the department will oversee enforcement and inspection services for new dwellings, including manufactured buildings used as dwellings.

SECTION 20. Comm 20.07 (60m) is created to read:

Comm 20.07 (60m) "Registered UDC inspection agency" means a person, business or entity that is registered with the department for the purpose of facilitating plan review, issuance

of Wisconsin uniform building permits, and inspection of one- and 2-family dwellings in municipalities where the department has jurisdiction pursuant to s. 101.651 (3) (b), Stats.

SECTION 21. Comm 20.07 (75m) is created to read:

Comm 20.07 (75m) "UDC" means chs. Comm 20 to 25, the Wisconsin uniform dwelling code.

SECTION 22. Comm 20.08 is repealed and recreated to read:

Comm 20.08 Wisconsin uniform building permit. (1) WHERE REQUIRED. (a) Except as provided under par. (b) and s. Comm 20.09 (5) (b) 2., a Wisconsin uniform building permit shall be obtained from the municipality administering and enforcing this code or from a registered UDC inspection agency administering and enforcing this code in a municipality where the department has jurisdiction pursuant to s. 101.651 (3) (b), Stats. before any on-site construction, including excavation for a structure, may begin.

(b) 1. A Wisconsin uniform building permit is not required for any activity or situation exempt from the code under s. Comm 20.05.

2. A Wisconsin uniform building permit is not required in a municipality which exercises the option to decline any administration and enforcement of this code pursuant to s. 101.651 (2m) (b), Stats., unless the county enforces the soil erosion control requirements under s. 101.651 (3m), Stats.

(2) INSPECTIONS. A person who obtains a Wisconsin uniform building permit from a registered UDC inspection agency shall retain the same agency to conduct the inspections for the project under s. Comm 20.10.

SECTION 23. Comm 20.09 (1) and (2) are amended to read:

Comm 20.09 Procedures for obtaining uniform building permit. (1) APPLICATION FOR A WISCONSIN UNIFORM BUILDING PERMIT. Application for a Wisconsin uniform building permit shall be on the forms obtained from the department, ~~or~~ the municipality or a registered UDC inspection agency administering and enforcing this code. No application shall be accepted that does not contain all the information requested on the form.

Note: See appendix for a copy of the Wisconsin uniform building permit and application.

Note: Any municipality exercising jurisdiction may require reasonable supplementary information not contained on the Wisconsin building permit application.

(2) (title) FILING OF ~~PERMITS~~ PERMIT APPLICATIONS. (a) *Wisconsin uniform building permit application.* 1. The Wisconsin uniform building permit application shall be filed with the

municipality or a registered UDC inspection agency administering and enforcing this code or its authorized representative. The municipality or the registered UDC inspection agency shall forward a copy of all applications for new dwelling construction to the department within 30 business days after permit issuance.

2. Pursuant to s. 101.65 (1m), Stats., a municipality may not issue a A building permit may not be issued for construction work covered under chs. Comm 21 and 22 to a dwelling contractor unless the contractor has a dwelling contractor financial responsibility certification issued by the department.

Note: See s. Comm 20.07 (26) for the definition of "dwelling contractor".

(b) *Wisconsin administrative permit.* Pursuant to s. 101.651 (4), Stats., the Wisconsin administrative permit shall be filed with the municipality and the department when the dwelling is located in a municipality that does not enforce the code which exercises the option to decline any administration and enforcement of this code pursuant to s. 101.651 (2m) (b), Stats.

SECTION 24. Comm 20.09 (3) is repealed and recreated to read:

(3) FEES. (a) *Municipal fees.* 1. The municipality shall, by ordinance, determine fees to cover expenses of plan examination, inspection and the issuance of the Wisconsin uniform building permit.

2. The municipality shall purchase a Wisconsin uniform building permit seal from the department for each new dwelling in accordance with s. Comm 2.34.

(b) *Soil erosion fees.* Counties enforcing the construction site erosion control provisions of this code shall purchase a Wisconsin uniform building permit seal from the department for each new dwelling in accordance with s. Comm 2.34.

(c) *Inspection agency fees.* A registered UDC inspection agency shall purchase a Wisconsin uniform building permit seal from the department for each new dwelling in accordance with s. Comm 2.34.

SECTION 25. Comm 20.09 (4) (intro.) and (5) (a) are amended to read:

(4) SUBMISSION OF PLANS. At least 2 sets of plans for all one- and 2-family dwellings shall be submitted to the department, or the municipality or the registered UDC inspection agency administering and enforcing this code, for examination and approval at the time the Wisconsin uniform building permit application is filed. A municipality exercising jurisdiction may require a third set of plans at its option.

(5) APPROVAL OF PLANS AND ISSUANCE OF PERMITS. (a) *Plan approval.* 1. If the department, or the municipality or the registered UDC inspection agency administering and

enforcing ~~the~~ this code; determines that the plans, including the plans indicating the erosion control procedures ~~as specified in sub. (4)~~, submitted for a one- or 2-family dwelling substantially conform to the provisions of this code and other legal requirements, an approval shall be issued.

2. The plans shall be stamped “conditionally approved” by a certified inspector who holds the respective credential for the plans reviewed.

3. One copy shall be returned to the applicant; and one copy shall be retained by the ~~department or the municipality~~ or the registered UDC inspection agency administering and enforcing the this code.

4. The conditions of approval shall be indicated by a letter or on the permit application.

5. All conditions of the approval shall be met during construction.

SECTION 26. Comm 20.09 (5) (b) 1. d. is repealed and recreated to read:

Comm 20.09 (5) (b) 1. d. The name and license number of the Wisconsin master plumber responsible for the installation of plumbing shall be entered on the permit by the issuing entity at the time of issuance.

SECTION 27. Comm 20.09 (5) (b) 2. is amended to read:

Comm 20.09 (5) (b) 2. 'Permit to start construction of footings and foundation.' a. Construction may begin on footings and foundations prior to the issuance of the Wisconsin uniform building permit where a permit to start construction is obtained.

b. Upon submittal of the application for a permit to start construction, a plot plan as ~~specified in sub. (4) (a) 1.~~, complete footing and foundation information including exterior grading, and a fee, the ~~department or the municipality~~ or a registered UDC inspection agency enforcing this code may issue a permit to start construction of the footings and foundation.

c. The issuance of a permit to start construction shall not influence the approval or denial of the Wisconsin uniform building permit application.

SECTION 28. Comm 20.09 (5) (c) is amended to read:

Comm 20.09 (5) (c) *Posting of permit.* 1. The Wisconsin uniform building permit shall be posted in a conspicuous place at the dwelling site.

2. The Wisconsin uniform building permit seal shall be affixed either to the posted permit or to the Wisconsin uniform building permit application. The permit seal number shall appear on both documents.

SECTION 29. Comm 20.09 (5) (c) Note is repealed.

SECTION 30. Comm 20.09 (6) (intro.) and (b) are amended to read:

Comm 20.09 (6) DISAPPROVAL OF PLANS AND DENIAL OF PERMITS. If the ~~department, or the municipality or the registered UDC inspection agency~~ administering and enforcing the this code, determines that the Wisconsin uniform building permit application or the plans, including the plans indicating the erosion control procedures ~~as specified in sub. (4)~~, do not substantially conform to the provisions of this code or other legal requirements are not met, approval shall be denied.

(b) *Stamping of plans.* Plans which do not substantially conform to the provisions of the this code shall be stamped "not approved." One copy shall be returned to the person applying for the Wisconsin uniform building permit; and one copy shall be retained by the department or the municipality or the registered UDC inspection agency administering and enforcing the this code.

SECTION 31. Comm 20.09 (8) is created to read:

Comm 20.09 (8) COUNTY ISSUANCE OF PERMITS FOR EROSION CONTROL. Counties that enforce soil erosion control requirements under s. 101.651 (3m), Stats., shall issue the Wisconsin uniform building permit in accordance with this section.

SECTION 32. Comm 20.10 (1) (intro.) is amended to read:

Comm 20.10 (1) REQUIRED INSPECTIONS. Inspections shall be conducted by the ~~department or the municipality or the registered UDC inspection agency~~ administering and enforcing this code to ~~ascertain whether or not~~ determine if the construction or installations conform to the conditionally approved plans, the Wisconsin uniform building permit application and the provisions of this code ~~and shall notify the permit holder and the owner of any violations to be corrected.~~

SECTION 33. Comm 20.10 (1) (a) is repealed and recreated to read:

Comm 20.10 (1) (a) *Inspection notice.* 1. The applicant or authorized representative shall request inspections from the municipality or the registered UDC inspection agency enforcing this code.

2. Except as provided under subd. 3., construction may not proceed beyond the point of inspection, as described under par (b) 1. to 3., until the inspection has been completed.

3. Construction may proceed if the inspection has not been completed within 2 business days after notification is received or as otherwise agreed between the applicant and the municipality or registered UDC inspection agency.

SECTION 34. Comm 20.10 (1) (c) 1. and 2. a. are amended to read:

Comm 20.10 (1) (c) *Notice of compliance and noncompliance.* 1. 'General.' a. Notice of compliance or noncompliance with this code shall be written on the building permit and posted at the job site.

b. Upon finding of noncompliance, the ~~department or municipality~~ or the registered UDC inspection agency enforcing this code shall also notify the applicant of record and the owner, in writing, of the violations to be corrected.

c. Except as specified in subd. 2., the ~~department or municipality~~ or the registered UDC inspection agency shall order all cited violations corrected within 30 days after written notification, unless an extension of time is granted under s. Comm 20.21.

2. 'Soil erosion control requirements.' a. The ~~department or municipality~~ or the registered UDC inspection agency shall order all cited violations of erosion control requirements under s. Comm 21.125 (1) (a) to (c) and (e) to (f) corrected within 72 hours after notification and may issue a special order directing an immediate cessation of work for failure to comply with the corrective order. Work may continue when the conditions of the cessation order have been met.

SECTION 35. Comm 20.11 (1) is repealed.

SECTION 36. Comm 20.11 (intro.) is renumbered Comm 20.11 (1) and amended to read:

Comm 20.11 Suspension or revocation of Wisconsin uniform building permit. (1)
(a) The ~~department, or the municipality~~ or the registered UDC inspection agency administering and enforcing this code, may suspend or revoke any Wisconsin uniform building permit where it appears that the permit or approval was obtained through fraud or deceit, where the applicant has willfully refused to correct a violation order or where the inspector is denied access to the premises.

(b) No construction shall ~~may~~ take place on the dwelling after suspension or revocation of the permit.

SECTION 37. Comm 20.11 (2) is amended to read:

Comm 20.11 (2) Any person aggrieved by a determination made by the department, a municipality or a registered UDC inspection agency may appeal the decision in accordance with s. Comm 20.21.

(END)

EFFECTIVE DATES

Pursuant to s. 227.22 (2) (intro.), Stats., treatment sections 5 to 10 of these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

Pursuant to s. 227.22 (2) (b), Stats., treatment sections 1 to 4 and 11 to 37 of these rules shall take effect on the first day of the third month following publication in the Wisconsin Administrative Register.

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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 00-159

AN ORDER to repeal Comm 2.34 (2) and (3), 20.06 (1) (intro.), 20.09 (5) (c) Note and 20.11 (1); to renumber Comm 2.34 (4) to (8), 5.02 – Table 5.02 lines 37 to 65, 5.06 – Table 5.06 lines 37 to 65, 20.02 (1) to (5) and 20.06 (1) (a) to (c); to renumber and amend Comm 20.02 (intro.) and 20.11 (intro.); to amend Comm 2.34 (1), 20.06 (title), 20.09 (1), (2), (4) (intro.), (5) (a), (b) 2. and (c) and (6) (intro.) and (b), 20.10 (1) (intro.) and (c) 1. and 2. a. and 20.11 (2); to repeal and recreate Comm 20.06 (1) (c) and (3), 20.08, 20.09 (3) and (5) (b) 1. d. and 20.10 (1) (a); and to create Comm 2.34 (2), 5.02 – Table 5.02 line 37, 5.06 – Table 5.06 line 37, 5.635, 20.02 (1) (b), 20.06 (1) (a) and 20.07 (60m), relating to uniform dwelling code inspection agencies.

Submitted by **DEPARTMENT OF COMMERCE**

11-07-00 RECEIVED BY LEGISLATIVE COUNCIL.
12-05-00 REPORT SENT TO AGENCY.

RS:MCP:rv

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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CLEARINGHOUSE RULE 00-159

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section 101.65 in part provides that a city, village, town or county may exercise jurisdiction over the construction and inspection of new dwellings by passage of ordinances that are adopted in accordance with the statutes. Section Comm 21.06 (1) (a) 1. generally provides that a city, village or town *shall* exercise jurisdiction over the construction and inspection of new dwellings. What statutory authority exists for imposing this mandate on cities, villages and towns? (If such statutory authority exists, why are counties excluded from the mandate?) With the exception of a city, village or town having a population of 2,500 or less, it appears that the department is relinquishing any authority to exercise jurisdiction over the construction and inspection of new dwellings under the one- and 2-dwelling code.

b. Section Comm 20.06 (1) (c) 1. b. provides that the department must review and make a determination "regarding municipal intent" to exercise jurisdiction under the Uniform Dwelling Code. Section Comm 20.06 (1) (c) 1. c. provides for a municipal appeal of the department's determination. Sections 101.65 and 101.651, Stats., do not include authorization for the department to make such a determination, and neither the statute nor the rule provides any standard for the department to make this decision. Is there statutory authority for this provision?

2. Form, Style and Placement in Administrative Code

a. The treatment of s. Comm 2.34 (2) in SECS. 2 and 3 should repeal and recreate that subsection. Following the repeal and recreation of sub. (2), sub. (3) can be repealed.

b. The term "UDC" is used in s. Comm 5.635 and several places in ch. Comm 20, but this term is not defined.

c. "Person" should be retained and "business or entity" should be deleted in s. Comm 5.635 (1). See s. 227.27, Stats., referencing the definition of "person" in s. 990.01 (26), Stats.

d. Section Comm 5.635 (4) (a) refers to "appropriately certified persons." Does this refer to certification under s. Comm 5.63? If so, a cross-reference should be included.

e. Section Comm 5.635 (4) (e) includes a reference to "all procedures established by the department for UDC enforcement." Any procedures that include policies meeting the definition of the term "rule" contained in s. 227.01 (13), Stats., should be placed in the administrative code. [See also s. Comm 20.06 (1) (a) 3.]

f. The phrase "Uniform Dwelling Code" is used in s. Comm 20.06 (1) (a) 2. and several other places in ch. Comm 20. This term is not defined in s. Comm 20.07. The term "code" is used in reference to the Wisconsin Uniform Dwelling Code. It is preferable to use the defined term.

g. In s. Comm 20.06 (1) (c) 3., the notation "subds." should be replaced by the notation "subd.," because of the following use of the disjunctive word "or."

h. Section Comm 20.06 (3) provides that department jurisdiction includes manufactured buildings used as dwellings. A separate manufactured building code is established under subch. III of ch. 101, Stats., and manufactured buildings are governed by ch. Comm 27. Why are manufactured buildings mentioned in ch. Comm 20?

i. Section Comm 20.08 (1) (b) 1. repeats the exemption provided in s. Comm 20.05 (3). Is it necessary to restate this exemption?

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

a. Section Comm 5.635 (1) provides that no person may engage in plan review, building permit issuance or inspection unless the person is registered with the department. With this regulatory requirement, the phrase "UDC inspection agency" can be used throughout ch. Comm 20, and "registered" can be omitted.

b. Section Comm 5.635 (1) requires registration "where the department has jurisdiction pursuant to s. 101.651 (3) (b), Stats." Should the same requirement for registration apply to inspections done by contract with the department under s. 101.65 (2), Stats., and in any circumstance where a county or municipality contracts for these services?

c. The last phrase in s. Comm 5.635 (1), following "unless," could be simplified as follows: "unless the person obtains a registration from the department as a UDC inspection agency."

d. "Their" should be replaced by "the" in s. Comm 5.635 (4) (b).

e. Section Comm 5.635 (4) (c) requires that *all* inspections under s. Comm 20.10 be conducted by a registered UDC inspection agency. However, it appears that municipalities may conduct some of the inspections required under s. Comm 20.10. Is "all" correct?

f. The prohibition in s. Comm 20.06 (1) (a) 3. should be rewritten. By prohibiting additional requirements "within the scope of the code," it implies that additional requirements not within the scope of the code may be adopted.

g. Section Comm 20.06 (1) (c) 2. requires municipalities that adopt a resolution under s. 101.651 (2m), Stats., to file a copy of the resolution with the department. The resolution under s. 101.651 (2m) (a), Stats., involves the municipality requesting the county to enforce the Uniform Dwelling Code. Should the county also be required to respond to the municipal request and notify the department of its response?

h. Section Comm 20.08 (1) (a) is written in the passive voice. Chapter Comm 20 does not appear to state who is required or authorized to obtain the building permit.

i. Section Comm 20.08 (1) (b) 2., provides that a Wisconsin Uniform Building Permit is not required in a municipality which exercises the option to decline any administration and enforcement under s. 101.65 (1) (2m) b, Stats. Is it accurate to indicate that a permit will never be needed in such a circumstance?

j. Section Comm 20.09 (2) (a) 1. refers to certain actions that are required for new dwelling construction. Section Comm 20.04 applies the Uniform Dwelling Code to certain construction other than new dwelling construction. Are these other kinds of construction meant to be excluded in s. Comm 20.09 (2) (a) 1.?

k. The three requirements related to building permit seals in s. Comm 20.09 (3) (a) 2., (b) and (c) appear to create a requirement to obtain three seals for the same dwelling. Is this the intent?