



State of Wisconsin \ Department of Industry, Labor and Human Relations

RULES in FINAL DRAFT FORM

Rule No.: Chapters ILHR 2 and 74

Relating to: Contractor Registration and Certification

Clearinghouse Rule No.: 95-007

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to create s. ILHR 2.36 and ch. ILHR 74, relating to contractor registration and certification.

Analysis of Proposed Rules

Statutory Authority: Section 101.178, as created by 1993 Wisconsin Act 243, and Section 101.63 (2m), as created by 1993 Wisconsin Act 126

Statutes Interpreted: Sections 101.178 and 101.63 (2m)

Under chapter 101 of the Wisconsin Statutes, the Department of Industry, Labor and Human Relations has the responsibility of protecting public health, safety and welfare relative to the construction of public buildings, places of employment and one- and two-family dwellings.

Section 101.178, Stats., as created by 1993 Wisconsin Act 243, requires the Department to adopt rules that establish a voluntary certification program for heating, ventilating and air conditioning (HVAC) contractors. Act 243 also requires HVAC contractors to register with the Department, and it specified the appointment of a committee to advise the Department with respect to the certification rules. Section 101.63 (2m), Stats., as created by 1993 Wisconsin Act 126, requires the Department to adopt rules for certifying the financial responsibility of contractors who perform construction work on one- and two-family dwellings (dwelling contractors). Act 126 also created a Contractor Financial Responsibility Council and required the council to recommend rules for the contractor financial responsibility certification program. The proposed rules have been developed to comply with these statutory mandates.

Both Acts also authorize the Department to establish rules for the assessment of fees to cover the costs of administering the certification programs. The proposed rules establish the required fees and add these fees to the Department's existing Fee Schedule, Chapter ILHR 2. The proposed fees are based on other fees currently in effect for similar Department programs.

The proposed rules for the contractor registration and certification requirements are contained in a new chapter ILHR 74.

The mandatory HVAC contractor registration requirements consist of the submittal of basic identification information. The proposed rules for the voluntary HVAC contractor certification contain requirements for qualification, application and examination. Under the proposed rules, an applicant for HVAC contractor certification must pass an examination or employ a person who has passed the examination. The HVAC contractor certification may only be obtained by a registered HVAC contractor.

The proposed rules for dwelling contractor certification consist of basic identification information in addition to the requirements in Act 126 relating to a surety bond, general liability insurance, worker's compensation insurance and unemployment compensation contributions. These rules apply to a contractor who takes out a building permit to perform construction work on a one- or two-family dwelling covered under the Uniform Dwelling Code. Owners of existing dwellings and owner-occupants are exempt from the rules.

The proposed rules also include requirements relating to denial, suspension and revocation of the registrations and certifications. All registrations and certifications issued under the proposed rules will expire annually and may be renewed.

The proposed rules were developed with the assistance of the following two advisory committees:

HVAC Contractor Certification Project Committee

<u>Name</u>	<u>Representing</u>
Tim Brusseau	Monroe Equipment, Inc.
Robert Cox	The Trane Company
Joe Jameson	League of Wisconsin Municipalities
Ted Kuczynski	Wisconsin State AFL-CIO
Michael Mamayek	Mechanical Contractors Association of Wisconsin
Fred Reindl	Wisc. Assoc. of Plumbing-Heating-Cooling Contractors
David Stockland	Associated Builders and Contractors of Wisconsin
Steven J. Strzok	City of Milwaukee
Robert Wiedenhoefer	Sheet Metal and Air Conditioning Contractors Assoc.
Donald C. Wood	Wisconsin Society of Professional Engineers

Contractor Financial Responsibility Council

<u>Name</u>	<u>Representing</u>
James E. Cauley	Public
Kenneth L. Lepak	Building Contractors
Bruce McMiller	Building Inspectors
Lawrence E. Schauder	Building Contractors
Mary Schroeder	Building Contractors

SECTION 1. ILHR 2.36 is created to read:

ILHR 2.36 REGISTRATION AND CERTIFICATION. Fees for the credential categories specified below shall be as follows:

Credential Categories	Initial	Credential	Examination
	Application	Issuance or Renewal	Initial or Re-take
Dwelling Contractor Financial Responsibility	\$10	\$30	N/A
HVAC Contractor Registration	\$10	\$30	N/A
HVAC Contractor Certification	\$10	\$30	N/A
HVAC Qualifier Certification	\$10	\$30	\$20

SECTION 2. Chapter ILHR 74 is created to read:

CHAPTER ILHR 74
CONTRACTOR REGISTRATION AND CERTIFICATION

Subchapter I
GENERAL REQUIREMENTS

ILHR 74.001 PURPOSE. Pursuant to ss. 101.178 and 101.63 (2m), Stats., the purpose of this chapter is to protect public and employe health, safety and welfare through the establishment of reasonable and effective rules for the registration and certification of contractors.

Note: See ch. ATCP 110 for additional consumer protection rules relating to home improvement practices.

ILHR 74.002 SCOPE. This chapter specifies the standards and procedures for obtaining contractor registrations and certifications.

ILHR 74.003 APPLICATION. The provisions of this chapter apply to persons who apply for any of the following credentials:

- (1) Dwelling contractor financial responsibility certification.
- (2) Mandatory HVAC contractor registration.
- (3) Voluntary HVAC contractor certification.
- (4) Voluntary HVAC qualifier certification.

Note: Copies of all forms identified in this chapter are available from the Division of Safety and Buildings, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-3151.

ILHR 74.004 CREDENTIAL PROCESSING TIMES. A credential issued under this chapter shall be granted or denied by the department within 15 business days after completion of the requirements to obtain the credential. If the application information is insufficient, the department shall request additional information within 15 business days of receipt of the application.

ILHR 74.005 PETITION FOR VARIANCE. (1) PROCEDURE. The department shall consider and may grant a variance to any requirement in this chapter upon receipt of a fee and a completed petition for variance form, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department may impose specific conditions in granting a variance to promote the protection of the health, safety and welfare of the employes or the public. Violation of any condition under which the variance is granted shall constitute a violation of this chapter.

(2) PETITION PROCESSING TIME. Except for priority petitions, the department shall review and make a determination on a petition for variance within 30 business days of receipt of all calculations, documents and fees required to complete the review. The department shall process priority petitions within 10 business days of receipt of the required items.

Note: Priority petitions are processed in less time, and the fees for processing these petitions are double the amounts for petitions processed within the standard processing time.

ILHR 74.01 DEFINITIONS. In this chapter:

(1) "Approved" means acceptable to the department.

(2) "Building permit" means an official document or certificate granting permission to perform construction or erosion control work on a one- or 2-family dwelling covered under chs. ILHR 20 to 25.

(3) "Construction or erosion control work" means work covered under chs. ILHR 21 and 22, except for electrical, plumbing and HVAC.

(4) "Credential" means a license, certification or registration issued by the department.

(5) "Department" means the department of industry, labor and human relations.

(6) "Dwelling contractor" means any person, firm or corporation engaged in the business of performing construction or erosion control work on a one- or 2-family dwelling covered under chs. ILHR 20 to 25 and who takes out a building permit. "Dwelling contractor" does not include the non-occupant owner of an existing dwelling.

Note: Pursuant to s. 101.654 (1)(b), Stats., "dwelling contractor" also does not include an owner of a dwelling who resides or will reside in the dwelling.

(7) "HVAC" means heating, ventilating or air conditioning.

(8) "HVAC contractor" means any person, firm or corporation engaged in the business of contracting to do installing, servicing, adjusting or modifying HVAC equipment.

Note: Incidental work by plumbers, electricians and other contractors in relation to HVAC equipment is not intended to define them as HVAC contractors.

(9) "HVAC equipment" means materials, piping, fittings, devices, appliances, apparatus, controls and control wiring used as part of or in connection with permanent heating, ventilating or air conditioning installations in buildings. HVAC equipment includes furnaces, boilers, heat exchangers, air conditioners, heat pumps, makeup air heaters, ventilation ductwork, baseboard heaters, bathroom fans and kitchen hoods. HVAC equipment does not include masonry fireplaces and chimneys, factory-built fireplaces and venting systems, decorative gas fireplaces, water heaters and process heating equipment.

(10) "Installing, servicing, adjusting or modifying" means to perform work on HVAC equipment in one- and 2-family dwellings, manufactured homes after installation, and public buildings and places of employment.

(11) "Municipality" means a city, village, town or county in this state.

ILHR 74.02 FEES. Fees required under this chapter shall be submitted as specified in ch. ILHR 2.

ILHR 74.03 MAILING. Unless otherwise provided by law, all orders, notices and other papers may be served by the department by first class mail at the address on file with the department. The credential holder shall be responsible for notifying the department of any change in mailing address.

ILHR 74.04 CREDENTIAL EXPIRATION. (1) Unless otherwise specified in this chapter, credentials issued under this chapter shall expire one year after issuance.

(2) If an applicant fails to renew a credential before the expiration date, the department may require the applicant to comply with the requirements specified for an initial application. If a credential requires passage of an examination, the applicant may be required to retake the examination if the application is made more than one year after the original credential expired.

ILHR 74.05 RENEWAL. (1) NOTICE OF RENEWAL. Notice of renewal shall be mailed to credential holders at least 30 days prior to expiration. Failure to receive a notice for renewal shall not be an excuse for failure to renew.

(2) RENEWAL APPLICATION. Renewal shall be contingent on returning the completed renewal notice to the department prior to the date of expiration and complying with any conditions set forth in the renewal notice.

ILHR 74.06 EXAMINATIONS. (1) GENERAL. The department shall conduct at least 4 examinations annually at times and locations specified by the department. Applicants shall pay a fee to take an examination.

(2) APPLICATIONS. (a) Applications for a credential that requires an examination shall be received by the department at least 30 days prior to the date of the required examination. The department may postpone the applicant's appearance to the next examination if the applicant fails to have the application on file with the department within the required time or the application information is incomplete.

(b) Applications shall expire if the applicant has not scored a passing grade on a required examination within one year from the date of initial application.

(c) The department shall notify the applicant if the department can or cannot grant the applicant's choice for the time and place of the examination.

(3) EXAM ATTENDANCE. (a) Applicants who fail to appear at a scheduled examination without giving prior notice to the department shall submit a re-examination fee in order to maintain a valid examination application.

(b) Applicants shall provide a photo identification or other appropriate evidence to gain admittance to the examination room.

(c) Applicants shall bring to the examination site all materials specified by the department.

(4) EXAM FAILURE. Upon notification of examination failure, applicants may request another examination.

(5) EXAM REVIEW. (a) Applicants may request to review their examination within 30 days of the date the examination was given.

(b) If the applicant must retake the examination, a requested examination review shall be conducted at least one week before the applicant is scheduled to retake the examination.

ILHR 74.07 DENIAL, SUSPENSION AND REVOCATION OF CREDENTIALS. (1) REASONS. The department may deny, suspend or revoke a credential if the department has investigated and determined that the applicant or holder of the credential has engaged in any of the following:

(a) Failure to meet requirements for the credential.

(b) Fraud or deceit in obtaining the credential.

Note: An example of fraud or deceit is falsely attesting to compliance with worker's compensation and unemployment compensation laws.

(c) Conviction of a criminal charge, misdemeanor or violation of a state or local regulation substantially related to HVAC construction activity or adjudication of mental incompetence by the courts.

Note: State regulations relating to HVAC construction are contained in chs. ILHR 20 to 25 and ILHR 50 to 64.

(d) Knowingly using the credential number of a person with a HVAC qualifier certification when that person's credential number is in current use by another HVAC contractor.

(e) Failure to file satisfactory proof of replacement bond or replacement insurance as required by s. 101.654 (4), Stats., for a certified financially responsible dwelling contractor.

(2) NOTICE OF DENIAL, SUSPENSION OR REVOCATION. A notice of denial, suspension or revocation shall be sent to the applicant or the credential holder. The notice shall set forth the basis for the denial, suspension or revocation, including the facts relied on by the department to make its decision and a citation of all applicable statutes and administrative rules establishing the legal basis for the decision. The notice shall include a statement that the applicant or the credential holder may file a request for administrative hearing and that the request will be denied if it is received by the department more than 30 days following the date of mailing of the notice of denial, suspension or revocation.

(3) HEARINGS. (a) Requests for an administrative hearing shall be filed with the office of legal counsel of the department no later than 30 days following the date of mailing of the notice of denial, suspension or revocation.

Note: Requests can be mailed to Office of Legal Counsel, P.O. Box 7946, Madison, WI 53707-7946, or faxed to (608) 266-1784. Facsimile requests received after 4:30 p.m. are considered filed on the next business day.

(b) Hearings shall comply with the provisions of chapter 227, Stats.

(4) REINSTATEMENT. (a) Suspension. A person whose credential has been suspended may have the credential reinstated only after the time set for suspension by the department or by the hearing examiner has passed and by complying with the conditions set forth in the suspension order.

(b) Revocation. A person whose credential has been revoked may, after a time period of at least one year, have the credential reinstated upon satisfactory showing that the basis for the revocation no longer exists. It shall be the responsibility of the person whose credential has been revoked to demonstrate that the credential should be reinstated. Where a satisfactory showing is made, the department shall reinstate the credential but may impose conditions on the reinstated credential to assure compliance with this chapter. The department may require a person whose credential has been revoked to reapply for the credential and to meet all requirements for a new applicant, including payment of application fees and successful completion of an examination.

ILHR 74.08 PENALTIES. Penalties for violation of any requirement of this chapter, or order issued pursuant to this chapter, shall be assessed in accordance with ss. 101.02 (12) and (13)(a), 101.178 (5) and 101.66 (3), Stats.

Subchapter II DWELLING CONTRACTOR FINANCIAL RESPONSIBILITY CERTIFICATION

ILHR 74.20 MUNICIPAL AUTHORITY. (1) PERMIT TO DWELLING CONTRACTOR. Pursuant to s. 101.65 (1m), Stats., a municipality may not issue a building permit to a dwelling contractor for a dwelling unless the contractor produces a dwelling contractor financial responsibility certification issued by the department under this subchapter.

(2) PERMIT TO OWNER. Pursuant to s. 101.65 (1r), Stats., a municipality shall provide an owner who applies for a building permit with a statement advising the owner of the consequences if the owner hires a dwelling contractor who is not bonded or insured as required.

ILHR 74.21 DUTIES OF CERTIFIED DWELLING CONTRACTOR. A certified dwelling contractor shall comply with the worker's compensation requirements, unemployment compensation requirements and liability or bond insurance requirements as specified under s. 101.654 (2), Stats.

ILHR 74.22 APPLICATION FOR DWELLING CONTRACTOR FINANCIAL RESPONSIBILITY CERTIFICATION. (1) APPLICATION. An applicant for a dwelling contractor financial responsibility certification 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 a corporation.

(2) REQUIREMENTS FOR CREDENTIAL. Applicants for dwelling contractor financial responsibility certification shall provide the department with all of the following:

- (a) Information required under s. 101.654 (2), Stats.
- (b) Name and address of the applicant.
- (c) Name and address of the business.
- (d) Fee specified in ch. ILHR 2.

Note: The information required under s. 101.654 (2), Stats., is contained on the application form.

ILHR 74.23 RENEWAL REQUIREMENTS. Applicants renewing the dwelling contractor financial responsibility certification shall provide the department with all of the following:

- (1) Information required under s. 101.654 (2), Stats.
- (2) Changes in the name and address of the applicant.
- (3) Changes in the name and address of the business.
- (4) Fee specified in ch. ILHR 2.

Subchapter III HVAC CONTRACTOR REGISTRATION

ILHR 74.30 REQUIRED REGISTRATION. Pursuant to s. 101.178 (2), Stats., all HVAC contractors shall register with the department as specified in this subchapter.

ILHR 74.31 APPLICATION FOR HVAC CONTRACTOR REGISTRATION. (1) APPLICATIONS. An applicant for a HVAC contractor 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 a corporation.

(2) REQUIREMENTS FOR CREDENTIAL. Applicants for HVAC contractor registration shall provide the department with all of the following:

- (a) Name and address of the applicant.
- (b) Name and address of the business.
- (c) Fee specified in ch. ILHR 2.

Note: Applicants for HVAC contractor registration may also need to comply with Workers Compensation and Unemployment Compensation laws under chs. 102 and 108, Stats.

ILHR 74.32 RENEWAL REQUIREMENTS. Applicants renewing the HVAC contractor registration shall provide the department with all of the following:

- (1) Changes in the name and address of the applicant.
- (2) Changes in the name and address of the business.
- (3) Fee specified in ch. ILHR 2.

Subchapter IV HVAC QUALIFIER CERTIFICATION

ILHR 74.40 CERTIFICATION NOT REQUIRED. Any person may apply for HVAC qualifier certification. A person is not required to hold an HVAC qualifier certification to work for an HVAC contractor.

ILHR 74.41 APPLICATION FOR HVAC QUALIFIER CERTIFICATION. (1) APPLICATIONS. An applicant for a HVAC qualifier certification shall be the person requesting the certification.

(2) REQUIREMENTS FOR CREDENTIAL. (a) Applicants for HVAC qualifier certification shall provide the department with all of the following:

1. Evidence that the applicant has one of the following:

a. At least 4 years of experience, based on a minimum of 1,000 hours per calendar year, in supervising or performing the design, installation, servicing or maintenance of HVAC equipment.

b. At least 4 years in a school of mechanical engineering or in an accredited college, university, or technical, vocational or apprenticeship school in an HVAC-related program.

c. Any combination of 4 years of experience allowed in subpar. a. and education allowed in subpar. b.

2. Name and address of the applicant.

3. Fee specified in ch. ILHR 2.

(b) Applicants for HVAC qualifier certification shall achieve a score of at least 70% on a written examination approved by the department. The examination shall be based on a job analysis of the individuals who supervise the installing, servicing, adjusting or modifying of HVAC equipment. The examination shall cover the following subject matter:

1. Regulations for HVAC systems in dwellings and commercial construction.
2. Design, installation, testing, operation and maintenance of HVAC systems in dwellings and commercial construction.

ILHR 74.42 RENEWAL REQUIREMENTS. Applicants renewing the HVAC qualifier certification shall provide the department with all of the following:

- (1) Changes in the name and address of the applicant.
- (2) Fee specified in ch. ILHR 2.

Subchapter V HVAC CONTRACTOR CERTIFICATION

ILHR 74.50 HVAC CONTRACTOR CERTIFICATION NOT REQUIRED. The department may not require HVAC contractors to obtain certification.

ILHR 74.51 MUNICIPALITY TO RECOGNIZE CERTIFIED HVAC CONTRACTORS. (1) GENERAL. Pursuant to s. 101.178 (3)(c), Stats., a municipality may not require a certified HVAC contractor to obtain any municipal license in order to install, service, adjust or modify HVAC equipment in that municipality.

Note: Pursuant to s. 101.178 (3)(d), Stats., municipalities may not start a licensure program for HVAC contractors after November 1, 1993.

(2) OTHER LICENSES. Municipalities may recognize department certification as qualification for any other type of municipal licenses.

ILHR 74.52 DUTIES OF CERTIFIED HVAC CONTRACTOR. A certified HVAC contractor shall employ at least one person full-time who holds a HVAC qualifier certification. A certified HVAC contractor shall disclose the credential number of the person with the HVAC qualifier certification upon request. If a certified HVAC contractor uses the credential number of a person with a HVAC qualifier certification, that person's credential number may not be in current use by another certified HVAC contractor.

ILHR 74.53 APPLICATION FOR HVAC CONTRACTOR CERTIFICATION. (1) APPLICATIONS. An applicant for a HVAC contractor certification 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 a corporation.

(2) REQUIREMENTS FOR CREDENTIAL. Applicants for HVAC contractor certification shall provide the department with all of the following:

- (a) The business's HVAC contractor registration number.
- (b) Signed statement that at least one person works full time for the company and holds a HVAC qualifier certification.
- (c) Name and address of the applicant.
- (d) Name and address of the business.
- (e) Fee specified in ch. ILHR 2.

ILHR 74.54 RENEWAL REQUIREMENTS. Applicants renewing the HVAC contractor certification shall provide the department with all of the following:

- (1) Changes in the name and address of the applicant.
- (2) Changes in the name and address of the business.
- (3) Fee specified in ch. ILHR 2.

(END)

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.

CODES6:169