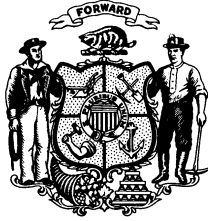


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## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 95-007**

### **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 October 1994.]**

#### **1. Statutory Authority**

a. The rule contains provisions relating to dwelling contractor financial responsibility certification. Under s. 101.615 (intro.), Stats., the one- and two-family dwelling code applies to a dwelling the initial construction of which was commenced on or after December 1, 1978. Section 101.615 (3), Stats., provides an exception to this general statement of applicability by stating that ss. 101.65 (1m) and (1r) and 101.654, Stats., will apply to an application for a building permit to perform work on a dwelling that is filed on or after April 1, 1995. Therefore, to the extent that the rule-making order indicates that it applies to applications for building permits to perform work on a dwelling on which construction commenced before December 1, 1978, it is without statutory authority.

b. Under s. 101.178 (2), Stats., “No person may engage in the business of installing or servicing heating, ventilating or air conditioning equipment unless the person registers with the department.” The department has interpreted that provision in subch. III of the rule to require only HVAC contractors to register. Since the statute specifically requires persons engaged in the business of installing or servicing heating, ventilating or air conditioning equipment to be registered, a rule which requires only the business to be registered and not the persons engaged in such work does not comply with s. 101.78 (2), Stats. The rule can be better coordinated with the statute if, in s. ILHR 74.01 (7), the phrase “of contracting to do installing, servicing, adjusting or modifying HVAC equipment” is replaced by the phrase “of installing or servicing HVAC equipment.”

## **2. Form, Style and Placement in Administrative Code**

a. The heading to ch. ILHR 74, “Chapter ILHR 74,” should be shown in solid capital letters. [See s. 1.05 (2) (a), Manual.]

b. The titles to subchs. I to V should be written in solid capital letters with no underscore. [See s. 1.05 (2) (a), Manual.]

c. In s. ILHR 74.002 (3), the word “contractors” should be replaced by the word “contractor.”

d. In s. ILHR 74.003, the word “Credentials” should be replaced by the phrase “A credential,” in order to be consistent with the use of the word “credential” at the end of the first sentence. Also, must the department request additional information within 15 business days of receipt of the application or within 15 business days of a determination that the application information is insufficient?

e. Section ILHR 74.01 (5) states that “dwelling contractor” does not include a nonoccupant owner of an existing dwelling. The provision is followed by a “Note” that says that it also does not include an owner of a dwelling who resides or will reside in the dwelling. That text should be added to the definition of “dwelling contractor.”

f. Section ILHR 74.01 (4) defines “department” as the safety and buildings division of the Department of Industry, Labor and Human Relations. That is not a proper definition. If the Safety and Buildings Division is to assume responsibilities under this subchapter, then the definition should read: “‘Division’ means the safety and buildings division of the department of industry, labor and human relations.” For those activities that will be handled by the department or another office or agency within the department, it may be appropriate to create a separate definition of those terms.

g. In s. ILHR 74.08 (3) (a), “office of legal counsel” should not be in capital letters. [See s. 1.01 (4) (a), Manual.]

h. In s. ILHR 74.22 (2) (d), applicants for dwelling contractor financial responsibility certification are required to provide the department with the “fee.” The provision should state that the division should be provided with “the fee required by s. ILHR 2.36.” This problem is repeated in ss. ILHR 74.23 (4), 74.31 (2) (c), 74.32 (3), 74.41 (2) (a) 3, 74.42 (2), 74.53 (2) (e) and 74.54 (3).

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

a. In s. ILHR 74.01 (1), the definition of “approved” is unclear, since “accepted” does not make it clear whether an action other than mere receipt of a document is needed. Does it mean a formal action by the division (or department) that means: (1) the application is complete; and (2) the applicant has met all applicable requirements?

b. In s. ILHR 74.06 (2) (b), should the word “may” be replaced by the word “shall”?

c. Section ILHR 74.06 (5) (b) states that “the department may charge a fee for the exam review.” However, in s. ILHR 2.36, a \$25 fee is listed for exam reviews. Is the fee intended to be mandatory?

d. In s. ILHR 74.07 (2), what is a “priority petition”?

e. In s. ILHR 74.08 (1) (e), the word “a” should be inserted before the word “certified.”