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Effective Dates: April 1, 2010 through August 28, 2010

ORDER OF DEPARTMENT OF HEALTH SERVICES TO ADOPT RULES

The Wisconsin Department of Health Services (DHS) hereby adopts emergency rules to create ss. DHS 195.145 and 197.145, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

FINDING OF EMERGENCY

DHS finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer's warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

DHS is issuing these emergency rules to ensure that the required rules are in effect by April 1, 2010. Substantially identical permanent rules are being proposed concurrent to this emergency order.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 101.149 (1), (2), (3), (5) and (8), 254.72 and 254.78, Stats.

Statutory authority: Sections 227.11 (2) (a), 250.04 (1), (2) (a), and (7), 254.74 (1) and (1g), and 254.85 (1), and (2), Stats.

Explanation of agency authority:

- Section 227.11 (2) (a), Stats., permits state agencies to exercise general rulemaking authority to interpret the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.
- Section 250.04 (1), (2) (a), and (7), Stats., designates DHS as having general responsibility for the public's health, gives DHS all powers necessary to fulfill its duties, and authorizes DHS to enforce and promulgate rules and orders governing the duties of local public health departments that effect public health.
- Section 254.74 (1) (a) and (d), Stats., provides DHS with authority to administer and enforce laws relating to lodging and food protection and any other laws relating to public health and safety in hotels, motels, tourist rooming houses, and bread and breakfast establishments.
- Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units as required under s. 101.149 (5) (c), Stats. and issue orders for compliance as specified under s. 101.149 (8) (a), Stats.

- Section 254.74 (1g), Stats., requires DHS to inspect hotels, motels, tourist rooming houses, and bed and breakfast establishments to ensure compliance with s. 101.149 (2) and (3), Stats.
- Section 254.85 (1), and (2), Stats., authorizes DHS to enter the premises of lodging establishments to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes, and to issue orders to protect the public health safety and welfare.

Related statute or rule:

Section 101.49, Stats. and ss. Comm 21.097 and 62.1200.

Plain language analysis:

Lodging establishments (hotels, tourist rooming houses, and bed and breakfast establishments) are required under s. 101.149 (2) and (3), Stats., to install and maintain carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer’s warranty against defects or are inspected as provided under rules promulgated by DHS under s. 254.74 (1) (am), Stats. Under s. 254.74 (1g), Stats., DHS is required to inspect lodging establishments to ensure compliance with s. 101.149 (2) and (3), Stats. Under s. 254.74 (1) (am), Stats, DHS is required to promulgate rules, in consultation with DHS of commerce, under which it shall conduct regular inspections of sealed combustion units for carbon monoxide emissions, except when a sealed combustion unit is covered by a manufacturer’s warranty against defects, and rules that specify the conditions under which it may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

Pursuant to ss. 101.01 (15), 101.63 (1), and 101.149 (6) (b), the department of commerce promulgated Comm 21.097 and 62.1200 (2), which limit the s. 101.149 (5), Stats., exception by requiring lodging establishments to install carbon monoxide detectors without exception in all new residential buildings constructed on or after October 1, 2008, according to specifications set out in the rules.

DHS’s proposed rules require lodging establishments to comply with the carbon monoxide detector installation and maintenance requirements of s. 101.149 (2) and (3), Stats., and s. Comm. 21.097 and 62.1200 (2). Consistent with ss. Comm. 21.097 and 62.1200 (2), the rules require installation of carbon monoxide detectors without exception in all new residential buildings constructed on or after October 1, 2008. With respect to any residential building for which construction was initiated or the plans were submitted to the department of commerce before October 1, 2008, and in which the operator has not installed a carbon monoxide detector, pursuant to the exception under s. 101.149 (5), Stats., the rules require the operator to arrange for the annual professional inspection of each fuel-burning appliance, which is not under warranty, including its vents and chimneys, for carbon monoxide emissions.

The rules require DHS to conduct regular inspections of lodging establishments to ensure compliance with the requirements for the installation and maintenance of carbon monoxide detectors. The rules prescribe the procedures under which DHS may issue orders to an establishment to correct a violation of the installation and maintenance requirements under s. 101.149 (2) and (3), Stats. The rules also require DHS to conduct regular inspections of facilities to ensure compliance with the requirement that sealed combustion appliances be inspected for carbon monoxide emissions in residential buildings where carbon monoxide detectors have not been installed pursuant to the exception under s. 101.149 (5), Stats. If DHS determines upon inspection that a sealed combustion unit has not been inspected as required, DHS will order the establishment to have an inspection conducted within 30 days of the order. If the establishment fails to conduct the inspection, DHS will arrange for the inspection by an agent qualified to conduct the inspection. The costs of the DHS agent’s inspection would be paid by the facility.

Summary of, and comparison with, existing or proposed federal regulations:

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

Comparison with rules in adjacent states:

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

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

Iowa requires the installation of carbon monoxide detectors in foster care facilities.

Michigan has not enacted a state-wide carbon monoxide detector regulation; however, the City of Pontiac has implemented a rule requiring carbon monoxide detectors in dwelling units and rental units, which has been phased in since 2004.

Minnesota statute, 299F.50, requires carbon monoxide detectors in newly-constructed single family homes and multifamily apartments units beginning January 1, 2007, existing single family homes as of August 1, 2008, and existing multi-family and apartment buildings as of August 1, 2009.

Summary of factual data and analytical methodologies:

In developing the rules, the DHS reviewed the language of 2007 Act 205 in relation to the specific circumstances presented by the facilities DHS regulates. DHS consulted with the department of commerce and industry representatives from the Association of Plumbing, Heating, and Cooling Contractors, and obtained considerable information from carbon monoxide alarm manufacturers and the Wisconsin Innkeepers Association. DHS used the following data sources for its analysis:

- Criteria adopted by DHS and approved by the Wisconsin Small Business Regulatory Review Board to determine whether DHS's proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to DHS's criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2008 is 3.8 percent.
- The 2002 Economic Census – Geographic Series (Wisconsin), which is compiled by the U.S. Census Bureau every 5 years for each year ending in "2" and "7" and contains the latest available economic data compiled on businesses located in Wisconsin. (The U.S. Census Bureau's data release schedule for the 2007 Economic Census – Geographic Series is November 2009-July 2010.) The data includes the annual sales reported by Wisconsin businesses classified as hotels and motels, "all other traveler accommodations," which would include tourist rooming houses, and bed and breakfast establishments. It should be noted, however, that the number of businesses reporting in each category is much lower than the actual number of facilities DHS regulated in 2009.
- Information relating to carbon monoxide or carbon monoxide detectors published by the following agencies:
 - The Environmental Protection Agency (EPA): <http://www.epa.gov/iaq/pubs/coftsht.html>
 - The National Fire Protection Association (NFPA): <http://www.nfpa.org/itemDetail.asp?categoryID=280&itemID=18270&URL=Research+&+Reports/Fact+sheets/Home+safety/Carbon+monoxide+poisoning&cookie%5Ftest=1>
 - The Centers for Disease Control (CDC): <http://www.cdc.gov/co/studies.htm>
 - The U.S. Consumer Product Safety Commission (CPSC): <http://www.cpsc.gov>
 - The Wisconsin Department of Commerce-Building and Safety Division <http://www.commerce.wi.gov>
 - Kidde: <http://www.kiddeus.com>
 - First Alert: <http://www.firstalert.com>

Analysis and supporting documents used to determine effect on small business:

DHS reviewed the statutory requirements and analyzed the costs to DHS to conduct inspections and the costs to lodging establishments to conduct inspections. To determine the costs of the rule to lodging establishments for inspections of fuel burning appliances, DHS gathered cost information from HVAC service companies. The cost information collected ranges between \$150-\$200 per inspection, not including travel time or the additional cost if more than one unit needs inspection. DHS used the high end of that range, the sales data from 2002 Economic Census-Wisconsin Geographic

Services, and the 2008 CPI data from the U.S. Department of Labor, Bureau of Labor Statistics, to estimate the annualized cost for the inspections, per establishment.

In addition, DHS accessed federal agency websites for information on carbon monoxide detectors and carbon monoxide poisoning. DHS also reviewed rules of the department of commerce, which has broad authority to protect public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment. DHS adopted language from the department of commerce rules to aid in consistency and continuity for the lodging industry, which is regulated by DHS and the department of commerce.

Effect on small business:

The proposed rules do not include responsibilities for facilities different from those under s. 101.149, Stats., except to require the installation of carbon monoxide detectors in new buildings, as required under ss. Comm. 21.095 and 62.1200, and to require lodging establishments that have not installed carbon monoxide detectors in residential buildings constructed or approved by the department of commerce before October 1, 2008, which have sealed combustion fuel burning appliances and no attached garages, to arrange for annual professional inspections of the fuel burning appliances, vents and chimneys, which are not under warranty. If DHS determines upon inspection that a sealed combustion unit has not been inspected as required, DHS will order the establishment to conduct an inspection within 30 days of the order. If the establishment fails to conduct the inspection, DHS will arrange for the inspection by an agent qualified to conduct the inspection. The costs of the DHS agent's inspection would be paid by the facility at an approximate minimum cost range of \$150 - \$200, not including travel time or the additional cost if more than one unit needs inspection.

Lodging establishments would not be affected financially by the requirement to conduct inspections of sealed combustion appliances for carbon monoxide emissions with respect to residential buildings constructed on or after October 1, 2008 because under ss Comm 62.1200 and 21.097, residential buildings constructed for lodging establishments on or after October 1, 2008, must, without exception, install and maintain interconnected hard-wired carbon monoxide detectors that have battery secondary power supplies.

DHS regulates hotels, motels, and tourist rooming houses under ch. DHS 195 and bed and breakfast establishments under ch. DHS 197. The lodging establishments regulated by DHS range in size from large hotels owned by national or multinational corporations to single tourist rooming houses that are owned by families or individuals and bed and breakfast establishments that are the owners' personal residences. Upon reviewing the U.S. Census – North American Industry Classification System (NAICS) accommodations industry information, and applying DHS's criteria for determining the economic impact on small businesses, DHS has concluded that a substantial number of businesses, or at least 10% of the businesses that would be affected by the proposed rules, are "small businesses" as defined under s. 227.114, Stats. However, DHS has determined that the rules would not have a significant economic impact on small businesses because per establishment operating expenditures are not increased, nor are revenues reduced, more than the 2008 CPI of 3.8%.

Hotels and motels (NAICS industry code 72111) are reported by the 2002 Economic Census as including 1,070 establishments with annual sales of \$1,154,024,000; an average of \$1,078,000 in sales per establishment. Based on a cost of \$200 for an inspection, the estimated annual aggregate cost to hotels and motels under the rule is \$214,000, or .02% of annual sales per establishment. Annual costs for individual establishments may vary depending on a number of factors including number of fuel burning appliances to be inspected, the inspector's travel time, and the region of the state.

Tourist rooming houses (or "all other traveler accommodation" under NAICS industry code 721199) are reported by the 2002 Economic Census as including 55 establishments. The 2002 Economic Census does not present annual sales data for this classification. Therefore, DHS cannot estimate the economic impact on these establishments of the requirement to inspect fuel burning appliances for carbon monoxide emissions. Annual costs for individual establishments may vary depending on a number of factors including number of fuel burning appliances to be inspected, the inspector's travel time, and the region of the state.

Bed and breakfast establishments (or bed and breakfast inns under NAICS industry code 721191) are reported by the 2002 Economic Census as including 81 establishments with annual sales of \$16,171,000; an average of \$199,642 per establishment. Based on a cost of \$200 for an inspection, the estimated annual minimum aggregate cost to bed and breakfast establishments under the rule is \$16,200, or .1% of annual sales per establishment. Annual costs for individual

establishments may vary depending on a number of factors including number of fuel burning appliances to be inspected, the inspector's travel time, and the region of the state.

While the DHS has attempted to provide information on the approximate costs to businesses regulated under ch. DHS 195 and 197, the cost imposed upon all these businesses is difficult to determine. As noted above, the 2002 Economic Census does not include all the establishments DHS regulates under DHS chs. 195 and 197. Moreover, DHS does not have any data on the number of hotels, motels, tourist rooming houses, and bed and breakfast establishments that have not installed carbon monoxide detectors or the number of sealed combustion appliances for which inspections would be required.

It may be less costly in the long-run, and safer, for an establishment to install and carbon monoxide detectors as specified under s. 101.149 (2) and (3), Stats. Carbon monoxide is known as a “senseless killer,” because it is a colorless, odorless gas that can cause sudden poisoning, which is often difficult to diagnose since the symptoms (shortness of breath, nausea, headaches, and dizziness) frequently mimic illnesses such as food poisoning or the flu. According to the Environmental Protection Agency, hundreds of people die from accidental carbon monoxide poisoning each year, and a majority of these deaths are caused by malfunctioning or improperly used fuel-burning appliances. The best way to avoid carbon monoxide poisoning is through prevention techniques. A battery operated and plug in type of carbon monoxide detector costs on average \$20 - \$50. Carbon monoxide detectors, which generally have warranties that are good for at least 5 years, are a cost effective way to protect the safety of individuals in hotels, motels, tourist rooming houses and bed and breakfast establishments.

**CHART
DETAILING THE COSTS**

<p>Cost to Lodging Establishment for Inspections of Sealed Combustion Units</p>	<p>Average cost for an inspection of a sealed combustion unit is \$150 - \$200, not including transportation. Costs may vary due to the number of units that may need inspection and the region of the state.</p>
<p>Cost to Lodging Establishment to Install Carbon Monoxide Alarms</p>	<p>Retail price of a single Kidde battery only carbon monoxide alarm (Kidde mdl#21006672) is \$19.97. The cost of a single AC/DC Kidde carbon monoxide alarm (Kidde mdl#21006927) is \$29.97. The cost of a single Plug-in digital carbon monoxide alarm complete with a 9-volt backup (Kidde mdl#KN-COPP-3) is \$49.87. The average warranty for a battery-operated or plug-in detector is 5 years. Batteries would need to be replaced every 6 months to one year.</p> <p>Retail price for a single hard-wired (120 volt) carbon monoxide alarm with a 9-volt battery backup (Kidde Mdl#21006406) is \$29.97. Installation and wiring would cost about \$200, or more depending upon the number of detectors and retrofitting. A single hard-wired (120 volt) 3-pin wire plug adapter (FA CO5120BN) costs \$30.00, and installation and wiring would cost \$500 or more depending upon the numbers of detectors and retrofitting. Prices at wholesale and competing brands may be lower. First Alert manufactures the “OneLink” wireless Carbon Monoxide/smoke Alarm system. In this system, one alarm activates a series of carbon monoxide/smoke detectors (up to 18 detectors). Each alarm (SC0501CN-3ST) costs \$90. The cost of installation by an electrical contractor could range from \$500-\$2,000 depending on the size and design of the building, the number of sleeping rooms and floors, and the location and number of fuel burning appliances.</p> <p>Another type of device is a combined carbon monoxide and smoke alarm with an A/C voice alert and a 9-volt battery. The cost of a single combination detector (Kidde mdl#KN-COSM-IB) is \$48.96.</p> <p>Prices at wholesale may be lower. Prices may vary among competing brands. DHS is not endorsing any particular brand of carbon monoxide detectors.</p>

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. DHS 195.145 is created to read:

DHS 195.145 Carbon monoxide detectors. (1) **PURPOSE.** The purpose of this section is to implement the requirements of s. 254.74 (1) (am) and (1g), Stats., with respect to facilities in a manner consistent with the standards in s. 101.149, Stats., and ss. Comm 21.097 and Comm 62.1200.

(2) **DEFINITIONS** For purposes of this section:

(a) “Carbon monoxide detector” means an electronic or battery-operated device that sounds an alarm when an unsafe level of carbon monoxide is in the air. A carbon monoxide detector is referred to as a “carbon monoxide alarm” by the Underwriters Laboratories, Inc., standards and ss. Comm 20.24 (2), 21.097 and 62.1200.

(b) “Fuel-burning appliance” means a device that is used or intended to be used in a residential building and burns fossil fuel or carbon based fuel where carbon monoxide is a combustion by-product. “Fuel-burning appliance” includes but is not limited to stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, heaters, fireplaces, and stoves.

(c) “Inspection agent” means an individual holding certification under s. Comm 5.73 as an HVAC qualifier, who has been retained by the department or its agent to conduct the inspections of sealed combustion units required under this section and ss. 101.149 (5) (c) and 254.74 (1) (am), Stats.

(d) “Listed” means equipment that is tested by an independent testing agency and accepted by the department of commerce.

(e) “Residential building” means a facility's building, any part of which is offered for pay as sleeping or lodging accommodations to tourists or transients.

(f) “Sealed combustion appliance” means a listed fuel-burning appliance that acquires all air for combustion through a dedicated sealed passage from the outside to a sealed combustion chamber and for which all combustion products are vented to the outside through a separate dedicated sealed vent.

(g) “Sleeping area” means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(h) “Unit” means a part of a residential building that is offered for pay as a sleeping place or sleeping accommodations to an individual or a group of individuals maintaining a common household, to the exclusion of others. It includes, but is not limited to, an individually rented room or suite of rooms in a hotel or an individually rented tourist cabin or cottage.

(3) **INSTALLATION REQUIREMENTS.** The operator shall install carbon monoxide detectors in compliance with the requirements of s. 101.149 (2), Stats., and s. Comm. 21.097 or 62.1200, as follows: (a) Except as provided in par. (b) or in sub. (6) of this section, the operator shall install a carbon monoxide detector in each residential building in all of the following places not later than the date specified under par. (c):

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

(b) If a unit is not part of a multiunit building, the operator need not install more than one carbon monoxide detector in the unit.

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

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

(d) A carbon monoxide detector shall conform to UL 2034 and shall be listed and labeled identifying conformance to UL 2034. Carbon monoxide detectors and sensors as part of a gas detection or emergency signaling system shall conform to UL 2075 and shall be listed and labeled identifying conformance to UL 2075.

(e) The operator shall install every carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(f) Installation shall conform to the applicable requirements of s. Comm 21.097 or Comm 62.1200.

(4) **MAINTENANCE REQUIREMENTS.** The operator shall maintain carbon monoxide detectors in compliance with the requirements of s. 101.149 (3), Stats., as follows: (a) The operator shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

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

(5) **TAMPERING PROHIBITED.** Pursuant to s. 101.149 (4), Stats., no person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

(6) **EXCEPTION TO INSTALLATION REQUIREMENTS.** The installation of carbon monoxide detectors is not required in a residential building if construction of the building was initiated before October 1, 2008, or if the department of commerce approved the plans for the construction of the building under s. 101.12, Stats., and s. Comm 61.30, which were submitted before October 1, 2008, provided the building does not have an attached garage and any one of the following circumstances applies:

(a) The building does not have any fuel-burning appliances.

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

(c) All the fuel-burning appliances in the building are of a sealed-combustion type and are inspected in accordance with sub. (7) or (8) (b).

(7) INSPECTION OF SEALED COMBUSTION APPLIANCES. (a) The operator shall arrange for the inspection of every sealed combustion appliance and the vents and chimneys serving the appliances in any residential building where a carbon monoxide detector has not been installed.

(b) The inspection of a sealed combustion appliance, vents and chimneys shall satisfy all of the following requirements:

1. The inspection of the sealed combustion appliance, vents and chimneys shall be for the purpose of determining carbon monoxide emission levels.

2. The inspection shall be performed at least once a year.

3. The inspection shall be performed by an individual who holds certification issued under s. Comm 5.73 as an HVAC qualifier.

4. If upon inspection the carbon monoxide emissions from a fuel burning appliance, vent or chimney are not within the manufacturer's specifications, the appliance may not be operated until it is repaired. If the appliance is repaired, it shall be inspected again before it is used.

5. The individual inspecting the sealed combustion appliance shall prepare a written, dated, and signed report identifying the level of carbon monoxide emissions and certifying whether or not carbon monoxide emissions are within the manufacturer's specifications, which the operator shall retain for review by the department or its agent.

(8) INSPECTIONS AND ENFORCEMENT BY DEPARTMENT. (a) The department or its agent shall conduct regular inspections of facilities to ensure compliance with s. 101.149 (2) and (3), Stats., and this section.

(b) If, upon inspection, the department or its agent determines that a sealed combustion appliance has not been inspected and certified as meeting the manufacturer's specifications for carbon monoxide emissions, as required under sub. (7), the department or agent shall order the operator to have an inspection conducted within 30 days. If the department or its agent has not received an inspection report as required under sub. (7) (b) 5. within 30 days, the department or agent shall arrange for an inspection agent to conduct an inspection that satisfies the requirements under sub. (7) (b), and the operator shall pay all of the costs associated with the inspection.

(c) Pursuant to s 101.149 (8) (a), Stats., if the department determines after an inspection of a residential building that the operator has violated the installation requirements under sub. (3) or the maintenance requirements under sub. (4), the department shall issue an order requiring the operator to correct the violation within 5 days or within such shorter period as the department determines is necessary to protect public health and safety. As required under s. 101.149 (8) (a), Stats., if the operator does not correct the violation within the time required, the operator shall forfeit \$50 for each day of violation occurring after the date on which the department finds that the violation was not corrected. Pursuant to s. 101.149 (8) (b), if a person is charged with more than one violation of sub. (3) or (4) arising out of an inspection of a single residential building, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture.

(d) A person who violates sub. (5) is subject to criminal penalties under s. 101.149 (8) (c), Stats.

SECTION 2. DHS 197.145 is created to read:

DHS 197.145 Carbon monoxide detectors. (1) PURPOSE. The purpose of this section is to implement the requirements of s. 254.74 (1) (am) and (1g), Stats., with respect to bed and breakfast establishments in a manner consistent with the standards in s. 101.149, Stats., and ss. Comm 21.097 Comm 62.1200.

(2) DEFINITIONS. For purposes of this section: (a) “Carbon monoxide detector” means an electronic or battery-operated device that sounds an alarm when an unsafe level of carbon monoxide is in the air. A carbon monoxide detector is referred to as a “carbon monoxide alarm” by the Underwriters Laboratories, Inc., standards and ss. Comm 20.24 (2), 21.097 and s. 62.1200.

(b) “Fuel-burning appliance” means a device that is used or intended to be used in a residential building and burns fossil fuel or carbon based fuel where carbon monoxide is a combustion by-product. “Fuel-burning appliance” includes but is not limited to stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, heaters, fireplaces, and stoves.

(c) “Inspection agent” means an individual holding certification under s. Comm 5.73 as an HVAC qualifier, who has been retained by the department or its agent to conduct the inspections of sealed combustion units required under this section and ss. 101.149 (5) (c) and 254.74 (1) (am), Stats.

(d) “Listed” means equipment that is tested by an independent testing agency and accepted by the department of commerce.

(e) “Residential building” means a bed and breakfast establishment.

(f) “Sealed combustion appliance” means a listed fuel-burning appliance that acquires all air for combustion through a dedicated sealed passage from the outside to a sealed combustion chamber and for which all combustion products are vented to the outside through a separate dedicated sealed vent.

(g) “Sleeping area” means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(h) “Unit” means a part of a residential building that is offered for pay as a sleeping place or sleeping accommodations to an individual or a group of individuals maintaining a common household to the exclusion of others. Every room or set of rooms that is rented out separately is a “unit.”

(3) INSTALLATION REQUIREMENTS. The operator shall install carbon monoxide detectors in compliance with the requirements of s. 101.149 (2), Stats., and s. Comm. 21.097 or 62.1200, as follows: (a) Except as provided in par. (b) or in sub. (6) of this section, the operator shall install a carbon monoxide detector in each residential building in all of the following places not later than the date specified under par. (c):

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

(b) If a unit is not part of a multiunit building, the operator need not install more than one carbon monoxide detector in the unit.

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

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

(d) A carbon monoxide detector shall conform to UL 2034 and shall be listed and labeled identifying conformance to UL 2034. Carbon monoxide detectors and sensors as part of a gas detection or emergency signaling system shall conform to UL 2075 and shall be listed and labeled identifying conformance to UL 2075.

(e) The operator shall install every carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(f) Installation shall conform to the applicable requirements of s. Comm 21.097 or Comm 62.1200.

(4) MAINTENANCE REQUIREMENTS. The operator shall maintain carbon monoxide detectors in compliance with the requirements of s. 101.149 (3), Stats., as follows: (a) The operator shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

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

(5) TAMPERING PROHIBITED. Pursuant to s. 101.149 (4), Stats., no person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

(6) EXCEPTION TO INSTALLATION REQUIREMENTS. The installation of carbon monoxide detectors is not required in a residential building if construction of the building was initiated before October 1, 2008, or if the department of commerce approved the plans for the construction of the building under s. 101.12, Stats., and s. Comm 61.30, provided the building does not have an attached garage and any one of the following circumstances applies:

(a) The building does not have any fuel-burning appliances.

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

(c) All the fuel-burning appliances in the building are of a sealed-combustion type and are inspected in accordance with sub. (7) or (8) (b).

(7) INSPECTION OF SEALED COMBUSTION APPLIANCES.

(a) The operator shall arrange for the inspection of every sealed combustion appliance and the vents and chimneys serving the appliances in any residential building where a carbon monoxide detector has not been installed.

(b) The inspection of a sealed combustion appliance, vents and chimneys shall satisfy the following requirements:

1. The inspection of the sealed combustion appliance, vents and chimneys shall be for the purpose of determining carbon monoxide emission levels.

2. The inspection shall be performed at least once a year.

3. The inspection shall be performed by an individual who holds certification issued under s. Comm 5.73 as an HVAC qualifier.

4. If upon inspection the carbon monoxide emissions from a fuel burning appliance, vent or chimney are not within the manufacturer's specifications, the appliance may not be operated until it is repaired. If the appliance is repaired, it shall be inspected again before it is used.

5. The individual inspecting the sealed combustion appliance shall prepare a written, dated, and signed report identifying the level of carbon monoxide emissions and certifying whether or not carbon monoxide emissions are within the manufacturer's specifications, which the operator shall retain for review by the department or its agent.

(8) INSPECTIONS AND ENFORCEMENT BY DEPARTMENT. (a) The department or its agent shall conduct regular inspections of facilities to ensure compliance with s. 101.149 (2) and (3), Stats., and this section.

(b) If, upon inspection, the department or its agent determines that a sealed combustion appliance has not been inspected and certified as meeting the manufacturer's specifications for carbon monoxide emissions, as required under sub. (7), the department or agent shall order the operator to have an inspection conducted within 30 days. If the department or its agent has not received an inspection report as required under sub. (7) (b) 5 within 30 days, the department or agent shall arrange for an inspection agent to conduct an inspection that satisfies the requirements under sub. (7) (b), and the operator shall pay all of the costs associated with the inspection.

(c) Pursuant to s. 101.149 (8) (a), Stats., if the department determines after an inspection of a residential building that the operator has violated the installation requirements under sub. (3) or the maintenance requirements under (4), the department shall issue an order requiring the operator to correct the violation within 5 days or within such shorter period as the department determines is necessary to protect public health and safety. As required under s. 101.149 (8) (a), Stats., if the operator does not correct the violation within the time required, the operator shall forfeit \$50 for each day of violation occurring after the date on which the department finds that the violation was not corrected. Pursuant to s. 101.149 (8) (b), if a person is charged with more than one violation of sub. (3) or (4) arising out of an inspection of a single residential building, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture.

(d) A person who violates sub. (5) is subject to criminal penalties under s. 101.149 (8) (c), Stats.

SECTION 3. EFFECTIVE DATE: The rules contained in this order shall take effect as emergency rules on April 1, 2010.

Wisconsin Department of Health Services

Dated: February 18, 2010

Karen E Timberlake, Department Secretary

SEAL:

DEPARTMENT OF HEALTH AND FAMILY SERVICES

STATE OF WISCONSIN

Office of Legal Counsel
EXS-282 (03/07)

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

HFS 195 Hotels, Motels and Tourist Rooming Houses and 197 Bed & Breakfast

3. Subject

Create rules pertaining to carbon monoxide detector installation, maintenance, inspection and enforcement for hotels, motels, tourist rooming house and bed and breakfast establishments.

4. State Fiscal Effect:

<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Yes No May be possible to agency's absorb within budget. <input type="checkbox"/> Decrease Costs
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5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Revenues <input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs
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8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts
 Others:

9. Private Sector Fiscal Effect (small businesses only):

<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Revenues <input type="checkbox"/> Decrease Revenues Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input checked="" type="checkbox"/> Increase Costs Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses <input type="checkbox"/> Decrease Costs
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10. Types of Small Businesses Affected:

Hotel, motel, rooming houses and bed and breakfast establishments.

11. Fiscal Analysis Summary

The proposed rules require the Department to regularly conduct inspections of lodging establishments to ensure compliance with s. 101.149 (2) and (3), Stats. Inspections are not required if facilities install and maintain carbon monoxide detectors under s. 101.149 (2) and (3), Stats. The inspections are also not required if the sealed combustion units are under manufacturer's warranty against defects. Costs to the Department under the proposed rules would include the cost to prepare, review and solicit bids for HVAC Qualifiers, individuals qualified to conduct inspections of fuel burning appliances, vents, and chimneys. DHS will add the inspection of lodging establishments for compliance with these rules as part of its regular inspection program. The costs of this additional workload can be absorbed by the Department.

The proposed rules do not include responsibilities for facilities different from those under s. 101.149, Stats., except to require lodging establishments with fuel burning appliances that are constructed before October 1, 2008, to arrange for annual professional inspections of the establishment's fuel burning appliances, vents and chimneys. If an establishment is determined not to have had the required inspection, the Department will order the establishment to conduct an inspection within 30 days of the order. If the inspection does not occur within 30 days then DHS will arrange for the inspection by an agent qualified to conduct the inspection. The costs of the DHS-ordered agent inspection would be paid by the facility. The costs to an establishment for an annual inspection conducted by a HVAC qualifier would be at the approximate minimum cost range of \$150 - \$200, not including transportation and would be dependent on the number of units needing inspection.

Establishments constructed after October 1, 2008, would not be affected by the rules because under Comm 62.1200 hotels, motels, and tourist rooming houses, and under s. Comm 21.097, bed and breakfast establishments constructed on or after October 1, 2008, where fuel burning appliances are installed must, without exception, install and maintain interconnected hard-wired carbon monoxide detectors that have battery secondary power supplies.

12. Long-Range Fiscal Implications

None known.

13. Name - Prepared by	Telephone Number	Date
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14. Name – OSF Analyst Reviewer	608-266-8155	September 28, 2009
<u>Ellen Hadidian</u>		
Signature – DHFS Secretary or Designee	Telephone Number	Date