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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



commerce.wi.gov

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

Jim Doyle, Governor  
Richard J. Leinenkugel, Secretary

May 7, 2009

Robert Marchant  
Senate Chief Clerk  
B20 Southeast, State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Patrick Fuller  
Assembly Chief Clerk  
Room 401  
17 West Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE  
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 08-110

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard J. Leinenkugel".

for Richard J. Leinenkugel  
Secretary

May 7, 2009

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

Representative Mike Huebsch  
Speaker of the Assembly  
Room 215 West, State Capitol  
Madison, Wisconsin 53702

Dear Senator Risser and Representative Huebsch:

**NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM**

CLEARINGHOUSE RULE NO.: 08-110

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

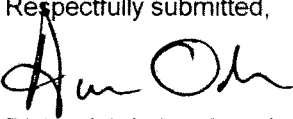
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

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,

  
for Richard J. Leinenkugel  
Secretary

# RULE REPORT

## Department of Commerce

Clearinghouse Rule No.: 08-110

Rule No.: Chapter Comm 5

Relating to: Building Contractor Registration

*Contact person for substantive questions:*

*Contact person for internal processing:*

Name Robert DuPont

Name James Quast

Title Bureau Director

Title Program Manager

Telephone Number (608) 266-8984

Telephone Number (608) 266-9292

1. Basis and purpose of the proposed rule.

The proposed rules require a registration credential for various building contractors who are involved in the construction or modification of public buildings and places of employment, public swimming pools and water attractions, and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department.

2. How the proposed rule advances relevant statutory goals or purposes.

Under chapter 560 of the Wisconsin Statutes, the Department of Commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs. Under chapters 101 and 145 of the Wisconsin Statutes, the Department of Commerce also protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment, public swimming pools and water attractions and adopts rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings. Various construction trades are involved in building or modifying these types of structures. Together with building owners and designers, construction trades share a responsibility to ensure that the buildings, relative to the respective trade's work, do not pose risk to public health and safety.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes have occurred for the rule analysis or the fiscal estimate.

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

ORIGINAL  
 CORRECTED  
 UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
 Chapter Comm 5

Amendment No.

**Subject**  
 Building Contractor Registration

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs By Category</b>		
State Operations - Salaries and Fringes	\$ 0	\$ -
(FTE Position Changes)	( 0 FTE)	( - FTE)
State Operations - Other Costs	0	-
Local Assistance	0	-
Aids to Individuals or Organizations	0	-
<b>TOTAL State Costs By Category</b>	<b>\$</b>	<b>\$ -</b>
<b>B. State Costs By Source of Funds</b>		
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
<b>III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
GPR Taxes	\$ 0	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	806,250	-
SEG/SEG-S	0	-
<b>TOTAL State Revenues</b>	<b>\$ 806,250</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

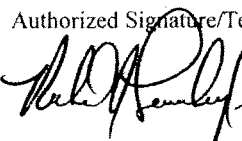
STATE

LOCAL

NET CHANGE IN COSTS                      \$ 0    \$ 0

NET CHANGE IN REVENUES                \$ 806,250                                      \$ 0

Agency/Prepared by: (Name & Phone No.)  
 Commerce/James Quast, 266-9292

Authorized Signature/Telephone No.  
 608-266-7088

Date  
 12/10/08

FISCAL ESTIMATE  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Chapter Comm 5  
Amendment No. if Applicable

**Subject**  
Building Contractor Registration

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation  
 Decrease Existing Appropriation  
 Create New Appropriation  
 Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs - May be Possible to Absorb Within Agency's Budget  Yes  No  
 Decrease Costs

**Local:**  No local government costs

1.  Increase Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:  
 Towns  Villages  Cities  
 Counties  Others \_\_\_\_\_  
 School Districts  WTCS Districts

2.  Decrease Costs  
 Permissive  Mandatory

4.  Decrease Revenues  
 Permissive  Mandatory

**Fund Sources Affected**  
 GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

The rules require a registration credential for various building contractors who are involved in the construction or modification of public buildings and places of employment and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The type of contracting businesses required to be registered under the rules include commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that there would be 30,000 contracting businesses that would be required to obtain registrations. The department proposes to charge \$100 for a 4-year, building contractor registration. There is also a \$15 initial application fee that would be waived if the applicant applies and pays for the registration via the internet. The department estimates that it would realize approximately \$806,250 in revenue annually.

The department anticipates that the workload associated with this registration can be managed with information technology usage and within current staff levels associated with the administration of the commercial building code program and the one- and 2- family dwelling code program.

**Long-Range Fiscal Implications**  
No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)  
Commerce/James Quast, 266-9292

Authorized Signature Telephone No.  
 608-266-7088

Date  
12/10/08

# FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 08-110

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Final regulatory flexibility analysis not required. (Statement of determination required.)

Pursuant to s. 227.19 (3m), Stats., the department has determined that the proposed rules will not have a direct or significant economic impact on small businesses.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

*(Continued on reverse side)*





DEPARTMENT OF COMMERCE  
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 5  
RELATING TO: Building Contractor Registration  
LOCATION: Conference Room 3B

DATE: January 21, 2009  
TIME: 10:00 a.m.  
CITY: Madison

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
CHRIS SCHORNBECK	SPRINKLER FITTERS / WI. PIPE TRADES	MILWAU, WI.	✓		
Brad Boycks	Wisconsin Builders Association	Madison, WI	✓		
Ed Dan Grogler	WI. Pipe Trades	Madison, WI			
JOHN MELKE	ABC	MADISON, WI			X
Jim Boullion	AGC of WI	Madison			X
Mark Reihl	All State Council of Carpenters	Madison	✓		
CHRIS GROSSEW	IBEW 159	MADISON			✓
BOB BANKER	AGC OF WI	MADISON			✓

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

Clearinghouse Rule Number: 08-110		Hearing Location: Madison	
Rule Number: Chapter Comm 5		Hearing Date: January 21, 2009	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
oral #1	John Mielke, Associated Builders and Contractors, Inc. Madison	<p>Recommends that the proposed rule be put on hold until a Dept. of Workforce Development work group has completed their work, therein synchronizing the proposed rules and the work group's recommendations reducing the likelihood of redundant requirements on contractors and enhancing Commerce's authority to promulgate the rule.</p> <p>Is in favor of the proposed registry of contractors as a positive step in the goal of protecting public health, safety and welfare.</p> <p>Considers the \$100 registration fee to be a negligible cost in the face of ensuring better safety and accountability among construction trades.</p> <p>Raises the concern that the lack of enforcement mechanisms in the proposal may hinder the ability to produce intended objectives.</p>	See response under Boycks, oral #3.
oral #2	Dan Gengler, Wisconsin Fire Protection Coalition. Madison	<p>Raises the following points on behalf of the association:</p> <ul style="list-style-type: none"> <li>Concern that the \$100 cost to register will add an additional cost to consumers when the industry is down.</li> </ul> <p>Questions the department's authority for the administrative rule in light of the failure of 2007 SB228 and AB446.</p> <p>Believes that housing report should be available pursuant to s. 227.115, Stats.</p>	Position noted.
oral #3	Brad Boycks, Wisconsin Builders Association Madison	<p>The fee reflects the department's anticipated costs for administering the registration program and provides supplemental revenue to help cover the costs of administering the various building programs under its responsibilities. The department does not consider the \$100 fee for a 4-year registration to be significant fiscal impact for a construction business or a substantial cost that will eventually be passed along to the building customer.</p> <p>The department considers the failure of the two bills to only represent the failure of specific legislative direction and mandates to the department. As cited in the Rule Analysis, the department has broad statutory authority under chapters 101, 145 and 560, Stats., to regulate the building trades.</p> <p>A housing report under s. 227.115, Stats., is only required when "a proposed rule directly or substantially affects the development, construction cost, or availability of housing in the state." The registration fee is not direct cost on housing. The department does not consider the registration fee to substantially affect construction cost in light of minimal fee, the length of the registration period and the fact that various contractors and subcontractors</p>	

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	Boyccks continued	<ul style="list-style-type: none"> <li>Suggests the creation of a website that people can sign up at no cost to be notified about department updates.</li> <li>If the proposal is implemented, asks if the department will be able to fund the \$100,000 builder training and \$600,000 consumer training under s. 101.657, Stats.</li> <li>Believes that the work on similar topics by DWD or the legislature, if implemented, would create confusion and compliance problems with the department's proposed registration.</li> </ul>	<p>are already credentialled and do not need this registration. The creation of a web site requires development, programming and maintenance expenditures in terms of time, resources and staffing.</p> <p>The funding of these training initiatives is dependent upon several variables and factors and is not solely associated with the revenue of this registration which reaches across several building relating programs.</p> <p>If legislation is enacted or DWD rules implemented that overlap with these proposed rules, the department will take the necessary steps to review and, if warranted, initiate rule-making actions to either remove conflicts or complement the subsequent laws and/or codes. The department is coordinating efforts with DWD.</p> <p>Position noted.</p>
oral #1	Mark Reihl, Wisconsin State Council of Carpenters, Madison	<p>The union supports the proposed rule.</p> <p>Believes that there is an industry problem with individuals being misclassified as independent contractors.</p> <p>Raises the following concerns regarding enforcement and application of the proposed rules to address such issues as worker misclassification:</p> <ul style="list-style-type: none"> <li>Applications should require many specific items of information; e.g. full legal name, date of birth, U.S. citizen status, home phone number, home address, social security number, federal employer identification number, Wisconsin tax identification number, unemployment tax identification number, business name, business phone, business address, contact address and phone, number of workers or self-employed, construction services, other construction business financial interests, worker's compensation insurance information, years in business, bond or liability insurance information, agree to compliance with employer determination test, highlight penalties and fines for submitting fraudulent information.</li> <li>Applications should incorporate the 9 factor test to determine whether an individual is an employer</li> <li>Applications should highlight the penalty and fines for submitting fraudulent information on the application.</li> </ul>	<p>The enforcement of regulations related to proper classification of workers is primarily the responsibility of other state agencies. The proposed contractor registration may provide a data and coordination resource to those agencies, but the proposal is not intended to replace other state agencies responsibilities or programs.</p>

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

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Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
	Reihl continued	<p>Other department contractor credentials such as the dwelling contractor should require the suggested specific items of information for the building contractor.</p> <p>Suggests that the department's website provide as much information as possible so customers can see basic information they are considering hiring, as well as to other state agencies.</p> <p>Suggests the credential term should be one year and contractors should notify the department when they go out of business or specific information is no longer correct.</p> <p>Believes that the fee is too low and should be sufficient to provide staff and resources to effectively enforce the program.</p> <p>Advocates a strong initial enforcement including fines and stop work orders to get the message out.</p> <p>Suggests a verification process to check contractor information.</p> <p>Believes that there should be a penalty for contractor who engages an unregistered contractor.</p> <p>Recommends that the department seek as necessary authority or remedies to effectively enforce the rule.</p>	<p>The code requirements for other business credentials have been modified to include the responsibility of not contracting with other construction businesses unless registered.</p>
oral #5	James Boullion, Associated General Contractors of Wisconsin, Madison	<p>Suggests that funds raised for the contractor registration should support educational programs, particularly those of high schools.</p> <p>Contends the rules should specify what information applicants will be required to submit for registration.</p>	<p>The revenue generated by contractor registration reflects the department's anticipated costs for administering the registration program and provides supplemental revenue to help cover the costs of administering the various building programs under its responsibilities. Specific statutory direction would be needed to use the money for educational programs. The rules do specify the substantive application information.</p>

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

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Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
	Boullion continued	<p>Contends the penalties for non-compliance must be spelled out in the rules.</p> <p>Contends that penalties should not include stop work orders as this can unfairly affect others on the jobsite.</p> <p>Suggests if stop work orders are utilized that:</p> <ul style="list-style-type: none"> <li>Contractors be allowed at least one business day to rectify the matter.</li> <li>Only be applied to the work of the offender and not the entire job.</li> <li>Their procedures be uniformly applied for state certified building inspectors.</li> </ul>	<p>Penalties are currently addressed under s. Comm 5.12. The department also has the ability to issue stop work or stop use orders under ch. Comm 3 for unlicensed activity. The stop work orders in most cases can be directed to a specific activity.</p> <p>The department anticipates use of compliance schedules for building contractor registrations.</p> <p>See previous response.</p> <p>Stop work orders under ch. Comm 3, can only be utilized by department inspectors.</p> <p>There are many examples under statutes where both the business and individual are required to be credentialed. Obligations for businesses are separate and distinct from those for individuals.</p>
written #1	Dennis and Jeff Rasmussen, Andry Rasmussen and Sons, Inc.	<p>Are against the rule requiring registration of their plumbing business. Feel that with the requirement of a plumber to be licensed, even if they own a business, that they are being penalized with the proposed additional fee.</p>	<p>There are many examples under statutes where both the business and individual are required to be credentialed. Obligations for businesses are separate and distinct from those for individuals.</p>
written #2	Dan Birenkott, Certified Soil Tester Sun Prairie	<p>Opposing a registry that would cost plumbing companies \$100 every 4 years.</p>	<p>Position noted.</p>
written #3	John and Dave Jentges, Steve Muskowski Jentges Excavating and Pumps, Inc Belgium	<p>Contend that the proposed registration would have no benefit to their company. Feel that their current individual licenses, plumbing, soil testing, POWTS maintenance, and their current continuing obligations are sufficient to serve clients and local regulatory agencies.</p>	<p>There are many examples under statutes where both the business and individual are required to be credentialed. Obligations for businesses are separate and distinct from those for individuals. There is no requirement that a plumbing business must be owned or run by a master plumber.</p>
written #4	James K. Thompson	<p>Opposes the proposed contractor registry. Contends the industry is overly regulated and questions the purpose of the registration. Professionals within the industry are licensed by the various agencies under which their discipline is regulated. Businesses that employ those individuals are typically organized under some of incorporation, and are therefore registered with DFI. Contractors must obtain plan reviews, permits and inspections of the work they perform.</p>	<p>Position noted. There are many examples under statutes where both the business and individual are required to be credentialed.</p>
written (email) #5	Sue Schambureck Madson Tiling and Excavating, Inc. Manitowoc	<p>Questions the need for the proposed registration. Feels another fee is not necessarily justifiable.</p>	<p>Position noted.</p>

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

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Relating to: Building Contractor Registration			
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	Schambureck continued	<p>Contends that if a POWTS installation business must have a MPRS number listed in it's advertising and the MPRS is necessary for operation, then it would seem that it's already been credentialled by the Department.</p> <p>Asks how we (MPRS) are different than HVAC contractors, elevator contractors, etc., who do not need to register?</p>	<p>There are many examples under statutes where both the business and individual are required to be credentialled. Obligations for businesses are separate and distinct from those for individuals.</p> <p>The credentials cited are examples of business credentials</p>
written (email) #6	Randy M Soper, Mike's Plumbing, Heating, & Electric, Inc. Pulcifer	<p>Opposes the additional fee to plumbing contractors. Contending they have license fees that are required to pay on an annual basis and this registration fee would be on top of those.</p>	<p>Position noted. There are many examples under statutes where both the business and individual are required to be credentialled. Obligations for businesses are separate and distinct from those for individuals. There is no requirement that a plumbing business must be owned or run by a master plumber.</p> <p>See response under Boycks, oral #3.</p>
written (email) #7	Mark A Ethrhiem, Onalaska	<p>Believes the proposed rule is bad. If the purpose is to a mailing list, suggests creating a web site, ask everyone to register for free and if they fail to do so in a years time then \$200 a \$200 late fee. Fails to see how this is going to do anything more than raise big bucks for the department.</p>	<p>See response under Boycks, oral #3.</p>
written (email) #8	Abe J Degnan, Degnan Design Builders, Inc	<p>Contends contractor registration should not be implemented through administrative rule in light of the failure of SB228 and AB446.</p> <p>Contends since DWD is working on a similar rule, the department should collaborate rather than introduce competing or redundant rules.</p>	<p>See response under Boycks, oral #3.</p>
written (email) #9	Mike Check Mike Check Builders	<p>Indicates the his company carries the Dwelling Contractor certification and Dwelling Contractor Qualifier certification.</p> <p>Opposes the proposed contractor registration rule, contending:</p> <ul style="list-style-type: none"> <li>• The cost is a factor in this economy</li> <li>• The legislature failed to pass two previous bills that were similar in nature and content.</li> <li>• There are means of communicating changes to codes and professional updates rather than registering interested parties.</li> </ul>	<p>See response under Boycks, oral #3.</p> <p>Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.</p>
written (email) #10	Chris Nelson Nelson Construction Service Balsam Lake	<p>The company does not approve or support the proposed contractor registration rule to add additional burden on small business and contractors.</p>	<p>Position noted.</p> <p>Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.</p>

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SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

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written (email) #11	James Lobin, Eagle View Glass Works Hudson	Prefers that his new rule did not pass, contending it only makes government bigger and really does nothing for us.	Position noted.
written (email) #12	Steve Thoner, Kruger Thoner Builders Ltd. Ellsworth	In home town of Ellsworth, a building permit for a 1200 sq. ft. home would be \$8400. This fee already puts "affordable housing" out of reach for many. Adding more fees to the building industry has to stop.	Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.
written (email) #13	Steven Clavette, Trustway Homes/Stone and Banister Remodeling Pewaukee	Asks to forgo this fee and work with the builders to reduce our costs and get buyers back in our models.	Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.
written (email) #14	Lisa Krusick, Integrity Log & Country Homes	Opposes the contractor registration rule being offered as currently drafted.	Position noted.
written (email) #15	James, Carol and Timothy De Young, Countryside Plumbing & Heating	Advocate for the efforts to help build the sagging building and remodeling industry rather than add more overhead costs to further discourage new construction and remodeling.  Indicate that it is a great idea to have everyone in the trades registered – suggest that to make it easier and less expensive by providing a web site that people can voluntarily sign up on.  Have no problem trying to require all types of contracting businesses to be uniformly governed and registered. But think some additional thought should be given to the scope and fees associated with making this requirement.	Businesses holding a HVAC Contractor registration are exempted from needing the Building Contractor registration.
written #16	John C. Seidl, Seidl Construction, Inc. Luxemburg	Feels the proposed registration is a bad idea, especially in this downturned economy. Uses subcontractors that have a proven track record that work hard to give a good job at a fair price.	Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.
written (email) #17	Ed Ellingson Cumberland	Opposed to contractor registry, contending plumbers are already licensed through the department and this would be yet another fee for business that is of no benefit to us.	There are many examples under statutes where both the business and individual are required to be credentialled. Obligations for businesses are separate and distinct from those for individuals.

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

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Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
written (email) #18	John Stunson, Northland Seamless Gutters, Inc. Hayward	Asks that the contractor registration rule be reconsidered, in light of SB228 and AB446 did not pass. Contends that this is a hidden fee that the industry does not need at this time.	See response under Boyce, oral #3.
written (email) #19	Gary L. Roehrig, Roehrig & Savola Builders, Inc.	Opposes the contractor registration rule. Points out the similar legislation last year was not enacted by the legislature.	See response under Boyce, oral #3.
written #20	Patrick Essie, Wisconsin Precast Concrete Association, Madison	Understands that in a few instances where manufacturers assemble concrete products on building sites that they would be required to register under the rules.  The association is opposed to new fees for contractor registry; contends that their businesses do not need to be further regulated in that the members have product approvals on file with the department and therein lists available to the department.  Raises the question whether manufacturers of agricultural buildings and silos would be required to register.	The proposed registration exempts manufacturers; the rules focus on construction/installation businesses.  Agricultural buildings and structures do not fall under the scope of the commercial building code and therefore contractors involved exclusively in their construction would be exempt under the proposed rules.
written #21	Patrick Essie, Wisconsin Onsite Water Recycling Association, Inc. Madison	The association is opposed to the creation of a contractor registry.  WOWRA is comprised of septic system installers who hold master plumber restricted service license. The business is not allowed to operate without the master plumber restricted service license.  The proposed rule creates many exemptions from registration, such as dwelling contractors, electrical contractors and HVAC contractors. Asks why these are exempted and others are not. If there is already a dwelling contractor license in place why the need to create a contractor registry of which the contractors are not even required to be a part of – the logic in this seems flawed	Opposition noted.  Individuals who install plumbing are statutorily required to be licensed; however, there are no laws or rules currently requiring plumbing businesses to be "operated" by licensed plumbers. Obligations for businesses are separate and distinct from those for individuals.  The registry data already exists for those contracting businesses holding one the departments other business credentials. The department will coordinate the various lists for communication purposes.
written (email) #22	Pamela, Van Dera	Opposes the contractor registration rule.  Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.	See response under Boyce, oral #3.



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

Clearinghouse Rule Number: 08-110		Hearing Location: Madison	
Rule Number: Chapter Comm 5		Hearing Date: January 21, 2009	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
written (email) #23	Douglas Schnell, Schnell Electric, Inc. Saint Nazianz	Opposes the contractor registration rule. Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.	See response under Boycks, oral #3.
written (email) #24	Craig Smidel, Extreme Audio	Opposes the contractor registration rule. Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.	See response under Boycks, oral #3.
written (email) #25	Mark Pekarske, Pekarske Builders, Inc. Reedsville	Opposes the contractor registration rule. Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.	See response under Boycks, oral #3.
written (email) #26	Lee Gosda, Saddle Ridge Corporation, Portage	Suggests that the department concentrate on Trades that are active and obtain their names from permits, rather than charge a fee for all to register, active and in active. Suggests a free web site to establish so any one can go for whatever information they desire. Foresees more fees coming down the pike and excuses why the department cannot operate or police this action without more costs, added employees and no more work, less projects, for the trades.	There is no system in place to gather data from permits. Commercial buildings permits are a discretionary municipal requirement and permits rarely identify all the subcontractors involved in a project. See response under Boycks, oral #3.
written #27	Ron Cutter, Cutter Vac, Fond du Lac	Opposes the contractor registration rule. Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.	See response under Boycks, oral #3.
written #28	James Macejkovic, Building Service Inc. Milwaukee	Does not support the rule in its current form. Is concerned whether information collected will be verified; contending if not, that there is a great potential for fraud and abuse leading to a false sense of security to potential clients. Suggests: <ul style="list-style-type: none"> <li>• A task force to identify what information is to be collected.</li> <li>• A formal review process to <ul style="list-style-type: none"> <li>o E-verify with Homeland Security to make sure the social security number and name match</li> </ul> </li> </ul>	Lack of support noted. The proposal is simply a registration; it is not an attempt to certify the competency of contractors. The proposed contractor registration may be a resource to those agencies, but the proposal is not intended to replace other state agencies responsibilities or programs.

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

Clearinghouse Rule Number: 08-110		Hearing Location: Madison	
Rule Number: Chapter Comm 5		Hearing Date: January 21, 2009	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
	Maceikovic continued	<ul style="list-style-type: none"> <li>○ Verify the address</li> <li>○ Verify phone number</li> <li>○ Cross check workers compensation insurance</li> <li>○ Check references</li> <li>● Identifying by rule the penalties for false information</li> <li>● Identifying as a contractor responsibility the use of registered and legitimate subcontractors.</li> <li>● Fines on the spot for violators.</li> </ul>	<p>The rules have been modified to incorporate this concept.</p> <p>The department does not have the ability to issue fines for these registrations.</p> <p>Opposition noted.</p>
written (email) #29	Pat	<p>Opposes the registration requirements for selected subcontractors.</p> <p>Contents that the department should be simplifying regulations and promoting small business.</p>	Opposition noted.
written (email) #30	Paul Soletski, Bay Lake Builders & Development	<p>Does not think that this is the time to proceed with contractor registration.</p> <p>Questions the department's authority to take portions of proposed legislation, SB228 and AB446, that were not enacted and move forward.</p> <p>Raises a concern of DWD or the legislature enacting similar rules.</p> <p>Suggests the creation of a web site that people can sign up on at no or low cost to be notified of changes to codes or get other professional updates.</p> <p>Suggests revising the content of the listed contracted businesses as some do not apply and phase the registration in as the economic time will bear this expense.</p> <p>Suggests allowing the dwelling contractor to enforce or strongly encourage this registration which would benefit the dwelling contractor's integrity to the consumer as having certified trades on each jobsite.</p>	See response under Boycks, oral #3.
written #31	Lonny Van Goethem, Van Goethem Septic Systems, Inc. Kewaunee	<p>Opposes the contractor registration rule.</p> <p>Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.</p>	See response under Boycks, oral #3.

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

Clearinghouse Rule Number: 08-110		Hearing Location: Madison	
Rule Number: Chapter Comm 5		Hearing Date: January 21, 2009	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
written (email) #32	Robert Charnitz	As a licensed master plumber-restricted sewer, does not see the need for a business license.  Suggest the department request all master plumbers to provide the name of the business they run, thereby, eliminating the need for a revenue generating license. Already pay a \$10 business tax registration with DOR.  Opposes the contractor registration rule.	There are many examples under statutes where both the business and individual are required to be credentialed. Obligations for businesses are separate and distinct from those for individuals.  There is no requirement that a plumbing business must be owned or run by a master plumber.
written #33	Steve Treu, E & B Insulation Sparta	Recalls the proposals of SB228 and AB446 last year and their failure to be enacted.  Opposes the proposed contractor registration rule.	See response under Boycks, oral #3.
written #34	Timothy Voeller, Bielinski Homes Waukesha	Questions the department's authority for the administrative rule in light of the failure of 2007 SB228 and AB446.  Believes that the work on similar topics by DWD or the legislature, if implemented, would create confusion and compliance problems with the department's proposed registration.  Suggests the creation of a website that people can sign up at no cost to be notified about department updates.	See response under Boycks, oral #3.
written #36	Charles F Tuschl, Tuschl Septic Systems Whitelaw	Does not favor the proposed contractor registration.  As the owner of a septic system installation firm, already holds a master plumber restricted license and a designer's license. Also holds a POWTS inspectors license. Believes that additional fees for licenses or registrations are taxation with representation.	Position noted.  There are many examples under statutes where both the business and individual are required to be credentialed. Obligations for businesses are separate and distinct from those for individuals. There is no requirement that a plumbing business must be owned or run by a master plumber.
written (email) #37	Kelli Newman, Gary Brunclik Construction	Is concerned that as a general contractor they have been losing jobs to people who work for cash, don't carry insurance, pay unemployment taxes or payroll taxes. Ask how are those who comply with the rules supposed to compete - believes there needs to be a focus on regulating these individuals.	Through data sharing and coordinating efforts with other state agencies the department hopes to promote a more "level playing field".



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 **08-110**

AN ORDER to repeal Comm 5.327 (3) (b), 5.34 (5) (d), and 5.35 (6) (c); to renumber Comm 5.327 (3) (a); to amend Comm 5.31 (1) (a), (4), and (5); to repeal and recreate Comm 5.60 (5) (c) 1., 5.61 (6) (b) 1., 5.63 (6) (b) 1. and 5.66 (6) (b) 1.; and to create Comm 5.01 (4) (h), 5.02 Table 5.02 line 8m., and footnote a, 5.06 Table 5.06 line 8m., 5.30 and 61.295, relating to building contractors and affecting small business.

Submitted by **DEPARTMENT OF COMMERCE**

12-12-2008 RECEIVED BY LEGISLATIVE COUNCIL.

01-13-2009 REPORT SENT TO AGENCY.

RNS:SG

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-110

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

As statutory authority, the department cites a number of general statutes relating to workplace and employee safety, as well as s. 101.63 (1), Stats., relating to the establishment of construction and inspection standards for one- and two-family dwellings. Several similar licenses and certifications, including some of those referred to in s. Comm 5.30 (1) (b) 1., are authorized by specific statutory references. [See ss. 101.862 (1), 101.95, 101.951, 101.96 (2), and 101.985 (1), Stats.] Additionally, the department cites 2007 Senate Bill 228 and 2007 Assembly Bill 466, each relating to the regulation of construction contractors and subcontractors, granting rule-making authority, and providing a penalty, as inspiration for the proposed rule. Given the specific statutory authority related to several similar licenses and certifications, and the failure of 2007 Senate Bill 228 and 2007 Assembly Bill 466 to be enacted into law, is the department certain it has the statutory authority to register building contractors?

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

a. In SECTION 5 of the proposed rule, do s. Comm 5.30 (1), (2), and (3) effectively communicate the department’s stated intent that the contractor registration requirement applies to business owners? Would the section be more effective if the “qualifications for registration” appeared earlier in the proposed rule? Also, ss. Comm 5.30 (1) and Comm 61.925 (2) refer to “person or entity” while s. Comm 5.30 (2), (3), (4), and (5) refer to “person.” Typically, references to “person” are construed to include both individuals and entities. In this case, the

department might consider defining "person" for purposes of the appropriate chapter or sections and incorporating the qualifications of s. Comm 5.30 (3) in that definition.

b. If a definition applies to a particular section, it should be placed at the beginning of the section. [See s. 1.02 (3), Manual.] Also, the definitions should be placed in alphabetical order.

c. In s. Comm 5.30 (1) (c) 1, "to" should replace the hyphen in "60-66."

d. The department should review s. Comm 5.30 (1) (c) 1. in the context of ss. 1.01 (7) (c) and 1.09, Manual. The use of "means" in a definition limits the scope of that definition. Accordingly, the last sentence of s. Comm 5.30 (1) (c) 1. is necessary only if those activities are included in the chapters cited in the first sentence. The department may wish to revise the note to describe the listed trades using a phrase other than "may include." For example, the department simply could say "Examples:". Additionally, the department should be aware that notes to rules are not part of substantive law created by rule. If the department wishes to list examples as part of substantive law, it should do so in the rule text; i.e., "The term includes...."

e. Section Comm 5.36 (4) (b) 1. should refer to "POWTS maintainer" or "maintainer" rather than "soil tester."

f. While unaffected by the proposed rule, s. Comm 5.62 (7) (b) 1. appears to share characteristics with numerous sections affected by the proposed rule. Did the department intend to repeal and recreate s. Comm 5.62 (7) (b) 1.?

g. Section Comm 5.66 applies to POWTS inspectors. Did the department intend to refer to other credentials in SECTION 18 of the proposed rule?

h. A number of changes in the proposed rule are unrelated to the registration of building contractors. These should be explained in greater detail in the analysis. For example, is s. Comm 61.295 (1) a new requirement? It should be explained as should the statutory basis for the requirement.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In SECTION 3 of the proposed rule, the cross-reference for late renewal should be s. Comm 5.07 (2) (b) 1. a.

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

a. The word "is" should be inserted before "created" in the treatment clause for SECTION 5.

b. In s. Comm 5.30 (2) (c), "His or her" should replace "Their." A similar change is needed in sub. (4) (a).

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 08-110

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Agency contact person for substantive questions.

Name: James Quast

Title: Program Manager

Telephone No. (608) 266-9292

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

- a.  Accepted
- b.  Accepted in part
- c.  Rejected
- d.  Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

- a.  Accepted
- b.  Accepted in part
- c.  Rejected
- d.  Comments attached

*(Continued on reverse side)*



3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached

## COMMENTS ON LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Clearinghouse Rule No. 08-110  
Rule No.: Chapter Comm 5  
Relating to: Building Contractor Registration

### **1. Statutory Authority**

The department considers the failure of the two bills to only represent the failure of specific legislative direction and mandates to the department. As cited in the Rule Analysis, the department has broad statutory authority under chapters 101, 145 and 560, Stats., to regulate the building trades.

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

a. The “qualifications for registration” follows the format and the wording for other business type credentials under the scope of chapter Comm 5 which have served the department well with those regulated by the code.

b. The placement of the definitions follows that in other sections of chapter Comm 5 and has served the department well with those regulated by the code.

f. Section Comm 5.62 (7) (b) 1. has been included in the rule draft.

h. The provisions of s. Comm 61.295 are not new, but they reflect the statutory direction of s. 101.02 (13) (b), Stats., as referenced in the rule. These provisions had been incorporated in previous editions of the Wisconsin Commercial Building Code, but had been inadvertently omitted recently.



State of Wisconsin \ Department of Commerce

# **RULES IN FINAL DRAFT FORM**

**Rule No.:** Chapter Comm 5

**Relating to:** Building Contractor Registration

**Clearinghouse Rule No.:** 08-110

The Wisconsin Department of Commerce adopts an order to repeal Comm 5.327 (3) (b), Comm 5.34 (5) (d), and Comm 5.35 (6) (c); to renumber Comm 5.327 (3) (a), Comm 5.327 (4), Comm 5.42 (4) and Comm 5.70 (4); to amend Comm 5.31 (1) (a), Comm 5.31 (4), and Comm 5.31 (5); to repeal and recreate Comm 5.33 (7) (b) 1., Comm 5.36 (4) (b) 1., Comm 5.60 (5) (c) 1., Comm 5.61 (6) (b) 1., Comm 5.62 (7) (b) 1., Comm 5.63 (6) (b) 1., and Comm 5.66 (6) (b) 1.; and to create Comm 5.01 (4) (i), Comm 5.02 Table 5.02 line 8m., Comm 5.02 Table 5.02 footnote a, Comm 5.06 Table 5.06 line 8m., Comm 5.30, Comm 5.327 (4) (b), Comm 5.41 (3) (c), Comm 5.42 (4) (b), Comm 5.70 (4) (b), Comm 5.9905 (4) (e), and Comm 61.295 relating to building contractors and affecting small business.

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### **Analysis of Rule**

#### **1. Statutes Interpreted**

Statutes Interpreted: ss. 101.02 (1), 101.02 (4), 101.02 (13) (b), 101.02 (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h), 101.19 (1) (f), 101.63 (1), 145.02 (2) and (3), 560.01 (1) and (2), and 560.02 (4), Stats.

#### **2. Statutory Authority**

Statutory Authority: ss. 101.02 (1), 101.02 (4), 101.02 (13) (b), 101.02 (15) (a), (b), (f), (h), (k) and (L), 101.12 (3) (h), 101.63 (1), 145.02 (2) and (3), 560.01 (1) and (2), and 560.02 (4), Stats.

#### **3. Related Statute or Rule**

Statutes: 101.148, 101.178, 101.654, 101.862, 101.94, 101.95, 101.951, 101.96, 101.985 (1), and 895.07 (13)  
Administrative Rules: Comm 5.31, 5.32, 5.323, 5.327, 5.41, 5.42, 5.70 and 5.9905

#### **4. Explanation of Agency Authority**

Under chapter 560 of the Wisconsin Statutes, the Department of Commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

Under chapters 101 and 145 of the Wisconsin Statutes, the Department of Commerce also protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment, public swimming pools and water attractions and adopts rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings. Various construction trades are involved in building or modifying these types of structures. Together with building owners and designers, construction trades share a responsibility to ensure that the buildings, relative to the respective trade's work, do not pose risk to public health and safety.

The registration would enhance the department's communication, education and oversight efforts for those businesses that contribute in various ways and aspects to the creation or alteration of buildings that limit the safety and health risks for the citizens of Wisconsin. Utilizing the registry of building contractors the department will more efficiently and effectively inform contractors about safety regulations and consumer protection regulations, such as the consumer notice required under s. 101.148 (2), Stats., pertaining to procedures for addressing construction defects.

The department recognizes that by registering Wisconsin building contractors and subcontractors, information pertaining to such registrants can be posted on the internet and made available to the Wisconsin Departments of Workforce Development and Revenue for use in their administration of unemployment insurance, workers compensation insurance and income tax programs, respectively. The registry of building contractors can be used by the aforementioned agencies to reinforce their efforts to minimize the misclassification of employees and to maximize proper participation in unemployment insurance and workers compensation insurance programs and proper payment of income taxes.

#### **5. Summary of Proposed Rules**

The proposed rules require a registration credential for various building contractors who are involved in the construction or modification of public buildings and places of employment, public swimming pools and water attractions, and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The registration credential is for a contracting business and is not required for each partner or employee who is involved with physically constructing or modifying the structures.

The proposed rules also eliminate several references to old implementation dates that no longer have relevancy.

#### **6. 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 relating to contractor registrations.

#### **7. Comparison with Rules in Adjacent States**

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

##### Illinois:

The state of Illinois does not have any regulations regarding the licensure of building contractors, except roofers.

Iowa:

The state of Iowa requires all individual contractors and businesses performing construction work in Iowa to be registered. The fee is \$25 for a two year registration. The prerequisites for registration include the demonstration of compliance with worker's compensation insurance requirements and compliance with unemployment tax requirements.

Michigan:

The state of Michigan requires licenses for persons and businesses that contract with property owners to build new homes or remodel homes. The license types are: Residential Builder, and Maintenance and Alteration Contractor. The Maintenance and Alteration Contractor is restricted to perform only specific trades and services for which they are licensed. The fee is \$225 for a three year license. Applicants for the license must complete 60 hours of approved education and pass an examination. Michigan does not have a licensing law regulating builders of commercial buildings.

Minnesota:

The state of Minnesota requires certifications for persons and businesses that contract with property owners to construct or improve dwellings for habitation by one to four families and where the person or business is involved with two or more special building skills. The Residential Contractor license and Remodeler license are annual licenses. The fees, which are based upon gross receipts, are \$260 to \$360. The application for the license must include a qualifying person who must take the required examination and fulfill the continuing education requirements for the licensee.

Also under the Minnesota Independent Contractor Certification Law, as of January 1, 2009, a certification is required for building contractors where contractors must establish that they are independent contractors versus employees utilizing the "9 Items" test related to Worker's Compensation. The fee for a two year certification is \$250.

## **8. Summary of Factual Data and Analytical Methodologies**

The registration provisions of the proposed rules were developed by analyzing and comparing the current administrative rules under chapter Comm 5 for other types of building contractors currently licensed, certified or registered by the department. The concept of the contractor registration was developed in light of proposed Wisconsin legislation under 2007 SB 228 and AB466, and with consideration of legislation in the states adjacent to Wisconsin.

## **9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report**

The proposed rules require the registration of individuals and entities that act as building contractors or subcontractors who are involved in the construction or modification of public buildings, places of employment, public swimming pools and water attractions, and one- and 2-family dwellings and who are not already credentialed by the department. The department currently credentials several contracting trades, including dwelling contractors, HVAC contractors, electrical contractors and elevator contractors. The rules would apply to those persons and entities engaged in the business of commercial general construction, drywall,

plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that the number of contractors to be registered under the rules would be 30,000. A contractor registration would cost \$100 for a 4-year term if applied for electronically and \$115 if applied for via paper. The department does not believe that this registration and fee would pose a significant impact on businesses.

An economic impact report has not been required to be prepared.

**10. Agency Contact.**

Robert DuPont, Bureau Director, robert.dupont@wisconsin.gov, (608) 266-8984

**11. Public Hearing Comments.**

The hearing record on this proposed rulemaking will remain open until January 28, 2009. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

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SECTION 1. Comm 5.01 (4) (i) is created to read:

**Comm 5.01 (4) (i) Building contractor.**

SECTION 2. Comm 5.02 Table 5.02 line 8m. is created to read:

Partial Table 5.02

**Table 5.02  
FEES**

	License, Certification or Registration Category	Type	Application Fee	Examination Fee	License, Certification or Registration Fee
	<b>Subchapter III</b>				
8m.	Building Contractor	Registration	\$15 <sup>a</sup>	NA	\$100

SECTION 3. Comm 5.02 Table 5.02 footnote a is created to read:

<sup>a</sup> No fee if application is submitted electronically; \$15 application fee for a late renewal per s. Comm 5.07 (2) (b)  
1. a.

SECTION 4. Comm 5.06 Table 5.06 line 8m. is created to read:

Partial Table 5.06

**Table 5.06  
TERMS**

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
	<b>Subchapter III</b>			
8m.	Building Contractor	4 years	Date of Issuance	NA

SECTION 5. Comm 5.30 is created to read:

**Comm 5.30 Building contractor. (1) GENERAL.** (a) Except as provided in par. (b), no person or entity may engage in a construction business or offer to engage in a construction business that affects public buildings, places of employment, one- and 2- family dwellings, public swimming pools and water attractions, unless the person or entity holds a registration issued by the department as a registered building contractor.

(b) Paragraph (a) does not apply to any of the following:

1. A person or entity that holds any of the following credentials issued by the department:

a. A dwelling contractor certification.

b. A dwelling contractor – restricted certification.



- c. A manufactured home manufacturer license.
  - d. A manufactured home dealer license.
  - e. A manufactured home installer license.
  - f. An electrical contractor certification.
  - g. An electrical contractor – restricted certification.
  - h. An HVAC contractor registration.
  - i. An elevator contractor license.
2. A person or entity that works only on real estate or property they own or lease.

(c) Under this section:

1. "Construction business" means a trade that installs, alters or repairs any building element, component, material or device that is regulated under the commercial building code, chs. Comm 60 to 66, the uniform dwelling code, chs. Comm 20 to 25, the electrical code, ch. Comm 16, the plumbing code, chs. Comm 81 to 87, or the public swimming pools and water attractions code, ch. Comm 90. The term does not include the design of the structure, the delivery of building supplies or materials, or the manufacture of a building product not on the building site.

**Note:** Examples of construction businesses that are to register.

Building site preparation/stabilization	Masonry and stone work
Drywall and plastering	Plumbing
Electric Wiring	Poured concrete foundations and structures
Finish carpentry	Precast concrete
Fire protection	Public swimming pools and water attractions
Flooring	Roofing
Framing carpentry	Siding
General building construction	Structural steel
Glass and glazing	Tile and terrazzo
Insulation	Wall coverings
	Other building or equipment specialties

2. "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

3. "One- and 2- family dwelling" means any building that contains one or 2 dwelling units that construction of which commenced on or after December 1, 1978.

**(2) APPLICATION FOR BUILDING CONTRACTOR REGISTRATION.** A person applying for a building contractor 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.

(c) The social security number or federal employer identification number for the business.

(d) A statement certifying compliance with worker's compensation requirements under ch. 102, Stats., and unemployment compensation requirements under ch. 108, Stats.

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

**(4) RESPONSIBILITIES.** A person or entity that holds a building contractor registration shall do all of the following:

(a) Include his or her registration number on all construction bids and contracts.

(b) Not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under sub. (1) (a) or (b).

(c) Not commence a construction business activity until a permit is issued for the construction for any project that requires a uniform building permit under s. Comm 20.08.

(d) Not commence a construction business activity until a permit is issued for the construction for any project that requires a municipal building permit involving a public building, a place of employment or a one- or 2- family dwelling.

(e) Not commence a construction business activity until plan approval is required under ss. Comm 61.30, 82.20, 83.22, or 90.04.

**(5) RENEWAL.** (a) A person may renew a building contractor registration.

(b) A building contractor registration shall be renewed in accordance with s. Comm 5.07.

SECTION 6. Comm 5.31 (1) (a) is amended to read:

**Comm 5.31 (1) (a)** Holds one of the following credentials issued by the department:

1. A dwelling contractor certification.

2. A dwelling contractor - restricted certification.

~~3. A dwelling contractor financial responsibility certification.~~

~~4. A dwelling contractor financial responsibility restricted certification.~~

SECTION 7. Comm 5.31 (4) is amended to read:

**Comm 5.31 (4) RESPONSIBILITIES.** (a) A person who holds a dwelling contractor certification; or a dwelling contractor - restricted certification; ~~a dwelling contractor financial responsibility certification or a dwelling contractor financial responsibility—restricted certification~~ shall comply with the responsibilities under s. 101.654 (4), Stats.

Note: See the appendix for a reprint of the requirements under s. 101.654 (4), Stats.

(b) For any construction project that requires a uniform building permit under s. Comm 20.08, a person who holds a dwelling contractor certification; or a dwelling contractor - restricted certification; ~~a dwelling contractor financial responsibility certification or a dwelling contractor financial responsibility—restricted certification~~ may not commence construction until a permit is issued for the construction.

(c) For any construction project that involves installation or modification of a private onsite wastewater treatment system, a person who holds a dwelling contractor certification; or a dwelling contractor - restricted certification; ~~a dwelling contractor financial responsibility certification or a dwelling contractor financial responsibility—restricted certification~~ may not commence construction until a sanitary permit is issued for the construction in accordance with s. Comm 83.21.

(d) A person who holds a dwelling contractor certification; or a dwelling contractor - restricted certification may not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under s. Comm 5.30 (1) (a) or (b).

SECTION 8. Comm 5.31 (5) is amended to read:

**Comm 5.31 (5) RENEWAL.** (a) Pursuant to s. 101.654 (3), Stats., a dwelling contractor certification; or a dwelling contractor - restricted certification; ~~a dwelling contractor financial responsibility certification or a dwelling contractor financial responsibility—restricted certification~~ shall be valid for no longer than one year after the date of issuance.

(b) 1. A person may renew his or her dwelling contractor certification; or dwelling contractor-restricted certification; ~~dwelling contractor financial responsibility certification or dwelling contractor financial responsibility—restricted certification.~~

2. A dwelling contractor certification; or a dwelling contractor-restricted certification; ~~a dwelling contractor financial responsibility certification and a dwelling contractor financial responsibility—restricted certification~~ shall be renewed in accordance with s. Comm 5.07.

3. ~~The renewal of a dwelling contractor financial responsibility certification or a dwelling contractor financial responsibility—restricted certification shall be respectively converted to a dwelling contractor certification or a dwelling contractor—restricted certification.~~

SECTION 9. Comm 5.327 (3) (b) is repealed.

SECTION 10. Comm 5.327 (3) (a) is renumbered 5.327 (intro.).

SECTION 11. Comm 5.327 (4) is renumbered Comm 5.327 (4) (a).

SECTION 12. Comm 5.327 (4) (b) is created to read:

**Comm 5.327 (4) (b)** A licensed manufactured home installer may not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under s. Comm 5.30 (1) (a) or (b).

SECTION 13. Comm 5.33 (7) (b) 1. is repealed and recreated to read:

**Comm 5.33 (7)** The renewal of a certification as a certified soil tester shall be contingent upon the soil tester obtaining at least 12 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 14. Comm 5.34 (5) (d) is repealed.

SECTION 15. Comm 5.35 (6) (c) is repealed.

SECTION 16. Comm 5.36 (4) (b) 1. is repealed and recreated to read:

**Comm 5.36 (4) (b) 1.** The renewal of a registration as a registered POWTS maintainer shall be contingent upon the POWTS maintainer obtaining at least 12 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 17. Comm 5.41 (3) (c) is created to read:

**Comm 5.41 (3) (c)** A certified electrical contractor may not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under s. Comm 5.30 (1) (a) or (b).

SECTION 18. Comm 5.42 (4) is renumbered Comm 5.42 (4) (a).

SECTION 19. Comm 5.42 (4) (b) is created to read:

**Comm 5.42 (4) (b)** A certified electrical contractor-restricted may not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under s. Comm 5.30 (1) (a) or (b).

SECTION 20. Comm 5.60 (5) (c) 1. is repealed and recreated to read:

**Comm 5.60 (5) (c) 1.** The renewal of a certification as a certified boiler-pressure vessel inspector or certified in-service field inspector shall be contingent upon the boiler-pressure vessel inspector or in-service field inspector obtaining at least 24 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 21. Comm 5.61 (6) (b) 1. is repealed and recreated to read:

**Comm 5.61 (6) (b) 1.** The renewal of a certification as a certified commercial building inspector shall be contingent upon the commercial building inspector obtaining at least 24 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 22. Comm 5.62 (7) (b) 1. is repealed and recreated to read:

**Comm 5.62 (7) (b) 1.** The renewal of a certification as a certified commercial electrical inspector shall be contingent upon the commercial electrical inspector obtaining at least 24 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 23. Comm 5.63 (6) (b) 1. is repealed and recreated to read:

**Comm 5.63 (6) (b) 1.** The renewal of a certification as a certified UDC-construction inspector, certified UDC-electrical inspector, certified UDC- HVAC inspector or certified UDC-plumbing inspector shall be contingent upon the inspector obtaining at least 24 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 24. Comm 5.66 (6) (b) 1. is repealed and recreated to read:

**Comm 5.66 (6) (b) 1.** The renewal of a certification as a certified POWTS inspector shall be contingent upon the inspector obtaining at least 24 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

SECTION 25. Comm 5.70 (4) is renumbered Comm 5.70 (4) (a).

SECTION 26. Comm 5.70 (4) (b) is created to read:

**Comm 5.70 (4) (b)** A person who holds a HVAC contractor registration may not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under s. Comm 5.30 (1) (a) or (b).

SECTION 27. Comm 5.9905 (4) (e) is created to read:

**Comm 5.9905 (4) (e)** A licensed elevator contractor may not contract with another person or entity to engage in construction business activities unless the person or entity holds a credential under s. Comm 5.30 (1) (a) or (b).

SECTION 28. Comm 61.295 is created to read:

**Comm 61.295 Administrative coordination. (1)** Pursuant to ss. 101.02 (13) (b) and 101.12 (3) (h), Stats., if plans are required to be submitted to the department for review under s. Comm 61.30, a municipality may not issue a building permit to commence construction or use of the building until the plans have been approved by the department or its agent.

**(2)** Pursuant to s. 101.02 (13) (b) Stats., a municipality may not issue a building permit to commence a construction business activity to a person or entity unless the person or entity holds a registration issued by the department under s. Comm 5.30 as a building contractor or holds one of the credentials listed under s. Comm 5.30 (1) (b) 1., except as provided in s. Comm 5.30 (1) (b) 2.

**END**

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**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.

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