



**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**

July 14, 2010

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.: 10-039

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,



Aaron Olver
Secretary

July 14, 2010

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

Representative Michael Sheridan
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53708

Dear Senator Risser and Representative Sheridan:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

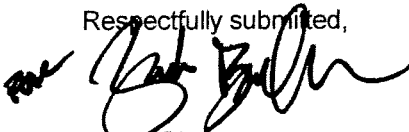
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

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,



Aaron Oliver
Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 10-039

Rule No.: Chapter Comm 5

Relating to: Building Contractor Registration

Contact person for substantive questions:

Contact person for internal processing:

Name James Quast

Name Norma Sampson

Title Program Manager

Title Communications Specialist

Telephone Number 608-266-9292

Telephone Number 608-267-7907

1. Basis and purpose of the proposed rule.

The basis of the proposed rules are sections 101.02 (1) and 101.147, Stats., as affected by 2009 Wisconsin Act 28. The purpose of the proposed rules is to clarify and revise the requirements and definitions in section Comm 5.30 relating to Building Contractor Registration as mandated by 2009 Wisconsin Act 28.

The definition of "construction business" has been broadened to include additional trades that are regulated by departmental codes. The proposed rules require the registration of trades and businesses that construct, install or alter mechanical equipment and devices such as boilers, gas systems, piping, mechanical refrigeration systems serving a building or structure. In addition, the proposed rules expand the registration requirement to those trades or businesses involved in the construction, installation or alteration of permanent devices or structures regulated under the amusement rides code and the sanitation code. The proposed rules create administrative procedures and a forfeiture process for those persons or entities doing construction- or installation-related work without a registration number.

In addition, the proposed rules consolidate two types of weld tester certifications into one category.

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

Under chapters 101 and 145 of the Wisconsin Statutes, the Department of Commerce 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.

The construction trades and equipment installers share a responsibility with owners and designers to ensure that the buildings and equipment relative to the respective trade's work, do not pose risk to public safety and health.

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

No substantive changes have been made.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Charter 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

2. Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules revise and clarify the code language for the registration of various building contractors involved in the construction or alteration of public buildings, places of employment and one- and 2-family dwellings. As mandated by 2009 Wisconsin Act 28, the rules expand the definition of "construction business" to include additional trades and businesses that are regulated by departmental codes. With the promulgation of these rules, businesses such as those involved in installing boilers, gas systems, piping, mechanical refrigeration systems, ski lifts and tows and permanent amusement rides will be required to register. In addition, the rules create a forfeiture process for those persons or entities doing construction-related work without a registration number.

The department estimates that there would be about 400 new businesses that would be required to register. The building contractor registration is \$100 for 4 years. 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 about \$10,750 in revenue annually.

The department anticipates that the workload associated with the registration and the enforcement of the program can be managed with current information technology and within current staff levels.

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.

James Quast 6-8976

Date

3/22/10

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
A. State Costs By Category		
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	-
TOTAL State Costs By Category	\$	\$ -
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	10,750	-
SEG/SEG-S	0	-
TOTAL State Revenues	\$ 10,750	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 10,750	\$ 0

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

Authorized Signature/Telephone No.
 [Signature] 6-8976

Date
 3/22/10

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 10-039

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 of Commerce has determined that the proposed rules to update chapter Comm 5 will not have a significant impact on a substantial number of 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)

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

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

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

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

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 5
 RELATING TO: Building Contractor Registration
 LOCATION: 3rd Floor Conference Room, #3
 Thompson Commerce Center

DATE: May 5, 2010
 TIME: 10 a.m.
 CITY: Madison, WI

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
JOHN MIELKE	ABC OF WI	MADISON		X	
PAT STEVENS	WI Builders Ass'n	Madison, WI			
Pattar Stone	Metro. Builders Ass'n	Waukesha, WI		X	
Jim Bouillon	AGC of Wis.	Madison, WI		X	
Kevin J Check	WI Housing Alliance Self - Kevin J Check Designs	Madison, WI			✓
		Wausau, WI			✓

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

Clearinghouse Rule Number: 10-039		Hearing Location: Madison, WI	
Rule Number: Ch. Comm 5, Licenses, Certifications and Registrations		Hearing Date: May 5, 2010	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Speaker 1, Exhibit 1	John Mielke Associated Builders and Contractors, Inc. (ABC) - Wisconsin Chapter 5330 Wall Street Madison, WI 53718	<p>a. Requests the penalties for failure to register as a Building Contractor be lowered. Believes a forfeiture 10-times the registration fee for a first-time violation is excessive. Indicates that failure to register does not put the consumer at risk because the Building Contractor is a "registration" and not a credential intended to demonstrate competence of the contractor.</p> <p>b. Objects to contractors being made responsible for primary enforcement of licensing regulations. Believes it is the responsibility of the individual contractor or business to be sure it is registered or appropriately credentialed, and it is the responsibility of the department - not other contractors - to enforce the registration requirement.</p>	<p>a. The proposal has been modified and the forfeitures have been lowered to \$250 for the first offense, \$500 for the second offense and \$1,000 for third and subsequent offenses for contractors who are not in compliance with the registration requirement and for contractors who engage nonregistered contractors. The department believes that the forfeiture amounts needs to be sufficient enough to serve as a disincentive for avoiding registration.</p> <p>b. The responsibility to contract with other contractors and subcontractors who hold the appropriate credentials if required is an existing requirement. The proposed rules establish a potential forfeiture for knowingly violating this responsibility. The department believes this responsibility helps facilitate registration compliance that is mandated under the statutes and supports state efforts to reduce misclassification of employees as subcontractors.</p>
Speaker 2	Pattie Stone Metropolitan Builders Association N16 W23321 Stone Ridge Drive Waukesha, WI 53188	<p>a. Objects to the substantial forfeitures for failing to register as a Building Contractor or for hiring a subcontractor who has not registered as a Building Contractor. Indicates that the main impetus of the Building Contractor Registration was to create a list of businesses involved in the construction industry in Wisconsin. Believes the extent of the fines being assessed goes beyond that original concept. Comments similar to Speaker #1 (Mielke), a.</p> <p>b. Opposes the proposed forfeiture system because the department's stop work order is an effective sanction on contractors to register as Building Contractors. Indicates that the threat of not being able to work when time is of the utmost is incentive enough for contractors to cross check all subcontractors against the department's Building Contractors Registration database.</p>	<p>a. See response under Mielke, comment a.</p> <p>b. The department's stop work order may not be an effective tool in all situations, especially if the work is already completed. The administrative forfeiture as specified by 2009 Wisconsin Act 28 provides another enforcement tool for the department to ensure compliance with the registration requirement.</p>

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

Clearinghouse Rule Number: 10-039		Hearing Location: Madison, WI	
Rule Number: Ch. Comm 5, Licenses, Certifications and Registrations		Hearing Date: May 5, 2010	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Speaker 3, Exhibit 2	Jim Bouillion Associated General Contractors (AGC) of Wisconsin 4814 East Broadway Madison, WI 53716	<p>a. Considers the penalties excessive, and objects to the proposed forfeiture system. Recommends the penalties for not registering or hiring an unregistered building contractor be lowered and used only as a compliance tool. Proposes a forfeiture system that ranges from \$100 for first offense to \$500 for third and subsequent offenses, and allows unregistered subcontractors to become registered before a penalty of \$250 to \$500 is assessed. Comments similar to Speaker #1, (Mielke), a. and b.</p> <p>b. Requests the department implement the new rule effective January 1, 2011, rather than during the holidays.</p>	<p>a. See responses under Mielke.</p> <p>b. The department will take the suggestion under consideration. The department has some flexibility as to the effective date at the adoption phase of the rule-making process, however, the legislative standing committee review phase ultimately may affect when the rules become effective. The existing rules clearly exclude the activity of design as not requiring registration. The proposed rule revisions do not affect or change this exclusion.</p>
Speaker 4	Kevin J. Check Kevin J. Check Designs 2501 Oakwood Blvd. Wausau, WI 54403	<p>Recommends the proposed rules include clarification relating to the exemption of designers. Believes the rules are confusing as they require anyone involved in the construction trades to register as a Building Contractor.</p>	<p>a. See response under Stone, comment b.</p>
Speaker 5, Exhibit 3	Pat Stevens Wisconsin Builders Association 4868 High Crossing Blvd. Madison, WI 53704	<p>a. Opposes the rule because Comm 3.13 (1) allows Commerce to issue stop work orders to enforce registration and credentialing requirements. Comments similar to Speaker #2 (Stone), b.</p> <p>b. Objects to the forfeiture system for dwelling contractors because it is inconsistent with state law. Cites Wisconsin Statutes 101.654 and 101.66 (3) that specifies the penalty for dwelling contractors failing to obtain certifications be \$25 to \$500 for each violation.</p> <p>c. Considers the forfeiture amounts excessive. Believes the registration is a paperwork exercise and does not relate to safety or if the contractor has the appropriate skill and training to conduct the job. Comments similar to Speaker #1 (Mielke), a.</p> <p>d. Recommends warnings be issued and discretion be built into the proposed rule. Believes contractors should be given the opportunity register before a forfeiture is imposed.</p>	<p>b. The department considers the penalties cited under ss. 101.654 and 101.66 (3), Stats., to be those imposed through the courts. Dwelling contractors also fall under the scope of s. 101.147, Stats., and therein the forfeitures of that section.</p> <p>c. See response under Mielke comment a.</p> <p>d. The department's work procedures typically involve educational efforts, including the issuance of warnings, before assessing forfeitures.</p>

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

Clearinghouse Rule Number: 10-039		Hearing Location: Madison, WI	
Rule Number: Ch. Comm 5, Licenses, Certifications and Registrations		Hearing Date: May 5, 2010	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Speaker 5, Exhibit 3 (cont.)	Pat Stevens (cont.)	e. Objects to contractors being made responsible for primary enforcement of licensing regulations. Comments similar to Speaker #1 (Mielke), b.	e. See response under Mielke, comment b.
Exhibit 4	Ann Rodrigues, CCP Vice President David & Goliath Builders, Inc./Avid Homes, LLC an Affiliate of DGBI/DG Remodeling a Division of DGBI 1177 Quail Court Pewaukee, WI 53072	a. Opposes the forfeiture system because the department already has the ability to enforce its registration and credentialing requirements by issuing stop work orders. Believes the forfeiture authority is not needed. Comments similar to Speaker #2 (Stone), b. b. Objects to the forfeiture because it is inconsistent with state law that specifies the penalty for not being certified as a dwelling contractor is \$25 to \$500 for each violation. Comments similar to Speaker #5 (Stevens), b. c. Opposes the forfeiture amounts because they are excessive for failure to register with the department. Comments similar to Speaker #1 (Mielke), a. d. Recommends the proposed rules require the department to issue a warning before imposing the forfeiture and allowing the negligent contractor the opportunity to register. Comments similar to Speaker #5 (Stevens), d. e. Objects to contractors becoming "licensing police" by subjecting them to forfeiture if they hire someone who does not hold the Business Contractor Registration. Comments similar to Speaker #1 (Mielke), Comment b.	a. See response under Stone, comment b. b. See response under Stevens, comment b. c. See response under Mielke, comment a. d. See response under Stevens, comment b. e. See response under Mielke, comment b.
Exhibit 5	Michael Coello Metropolitan Builders Association Coello & Associates, Inc. 2122 South West Ave. Waukesha, WI 53189	Opposes the proposed forfeiture system. Believes the "stop work" order is sufficient to enforce Building Contractor Registration. Endorses the AGC's forfeiture proposal. Comments similar to Speaker #1 (Mielke), comment a., and Speaker #3 (Stone), b.	See response under Mielke, comment a., and Stone, comment b.

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

Clearinghouse Rule Number: 10-039		Hearing Location: Madison, WI	
Rule Number: Ch. Comm 5, Licenses, Certifications and Registrations		Hearing Date: May 5, 2010	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Exhibit 6	Wayne E. Foster The Foster Group 17100 W. Bluemound Road, Suite 209 Brookfield, WI 53005	Opposes the fine structure on dwelling contractors who are certified and registered with the department. Indicates that requiring registration is discriminatory to small businesses in the construction industry and serves no legitimate need. Believes the proposed forfeitures are excessive, plus the proposed system requires certified dwelling contractors to "police" the proposed requirement.	The registration of building contractors and dwelling contractors is statutorily mandated. Dwelling contractors also fall under the scope of s. 101.147, Stats., and therein in the forfeitures of that section. See response under Mielke, comment a.
Exhibit 7	Mark S. Reihl Wisconsin State Council of Carpenters 115 W. Main Street Madison, WI 53703	Supports the proposed rules relating to Building Contractor Registration. Believes the proposed forfeitures for contractors who are not in compliance with the registration requirement and for contractors who engage nonregistered contractors are fair and necessary to assure compliance.	Support noted.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council 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 10-039

AN ORDER to repeal Comm 5.30 (1) (c) (intro.); to renumber Comm 5.12 (2), (2m), and (3) to (7), and 5.30 (1) (c) 2.; to renumber and amend Comm 5.12 (1) and 5.30 (1) (c) 3.; to amend Comm 5.02 Table 5.02 (partial), 5.06 Table 5.06 (partial), and 5.35 (1), (2) (intro.), (3) (e), (5) (intro), and (6); and to create Comm 5.125 (3), 5.30 (1) (a) Note and (b) l. j. and k., (1m) (a), and (4) (e) Note, relating to building contractors and affecting small business.

Submitted by **DEPARTMENT OF COMMERCE**

04-05-2010 RECEIVED BY LEGISLATIVE COUNCIL.

05-03-2010 REPORT SENT TO AGENCY.

RS:MM

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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
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CLEARINGHOUSE RULE 10-039

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

The rule appears to exceed the scope of the authorizing statute by authorizing the department to assess a forfeiture against a person other than a person who violates the requirements of s. 101.147, Stats. Section 101.147, Stats., prohibits any person from holding himself or herself out as a construction contractor unless the person is registered as a construction contractor with the department and the statute authorizes the department to assess a forfeiture against any person who violates that provision. The rule, however, authorizes the department to assess a forfeiture against a person who contracts with another individual or entity to engage in construction business activities if that other person is not properly registered as a building contractor. The rule analysis should cite specific authority for imposing penalties on persons other than those identified in s. 101.147, Stats.

2. Form, Style and Placement in Administrative Code

a. The rule analysis should explain why the rule, in s. Comm 5.125 (3) (a), imposes penalties for the violations of licensing requirements for the 10 types of licenses, certifications, and registrations listed.

b. In the title to s. Comm 5.125, the phrase “Administrative forfeitures” should be underscored.

c. It appears that the treatment clause of SECTION 8 should read: "Comm 5.30 (1) (c) (intro.) and 1. are repealed." Then, following SECTION 10, a new SECTION 10m, can be inserted to read:

SECTION 10m. Comm 5.30 (1m) (intro.) is created to read:

Comm 5.30 (1m) (intro.) In this section:

The creation of this introduction will provide an appropriate instruction regarding the applicability of the definitions contained in s. Comm 5.30 (1m).

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

a. Section Comm 5.125 (3) (a) should contain cross-references to the specific administrative rule provisions which, if violated, would be the basis for imposition of a penalty under the proposed rule.

b. In s. Comm 5.125 (3) (c), the reference to "a credential required under s. Comm 5.30 (1) (a) or (b)" should be rewritten to eliminate the reference to par. (b), since that paragraph does not require a credential. In addition, rather than referring to "a credential required under s. Comm 5.30 (1) (a)," the rule should refer to the actual credential required under that paragraph, which is a building contractor registration.

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

a. In the second paragraph of the summary of proposed rules, the word "and" should be inserted before the phrase "mechanical refrigeration."

b. In s. Comm 5.125 (3) (a), "licensing" should be deleted since it is inaccurate to refer to "licensing requirements" of a certification or registration. In addition, it should be made clear in that paragraph that the conduct for which a penalty may be assessed under par. (c) is not the violation of a licensing requirement by the person penalized but rather it is the violation of licensing requirement by an individual or entity with whom the person contracts.

c. In s. Comm 5.125 (3) (b), it appears that the phrase "of license, certification, or registration" should be inserted after "type."

d. In the note to s. Comm 5.30 (4) (e), the period following the notation "Comm" should be deleted.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Agency contact person for substantive questions.

Name: James Quast

Title: Project 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. 10-039
Rule No.: Chapter Comm 5
Relating to: Building Contractor Registrations

1. Statutory Authority

Section 101.147, Stats., directs the department to develop rules for the registration of construction contractors. The statutes do not define or identify the construction contractors to be covered by the law or the administrative rules. In addition, nothing in s. 101.147, Stats., exempts or acknowledges construction/building contractors who are already required to obtain and hold specific or specialty credentials relating to their line of building/construction work. Examples of the required specialty contractor credentials include HVAC contractors, dwelling contractors and electrical contractors. On the face of it, these specialty contractors also fall under the scope of s. 101.147, Stats. The department has chosen not to require businesses to acquire an addition contractor business registration if the business already holds one of the specialty contractor credentials issued by the department. In light that any and all building/construction contractors fall under the scope of s. 101.147, Stats., the department deems it appropriate that the administrative forfeiture provisions also apply across the board to all the building/construction contractors whether the business holds a generic registration or a specialty credential.

2. Form, Style and Placement in Administrative Code

a. Pursuant to s. 227.14 (2) (a) 2., Stats., the summary has been revised to clarify that the administrative forfeitures are applicable the 10 other types of credentials that are deemed equivalent building contractor registrations. See comment also under #1.

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

a. The department believes that the statutory references cited with each of the 10 credential types is sufficient. This type of statutory reference is similar to the administrative forfeitures pertaining to plumbing licensing violations.



State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Chapter Comm 5

Relating to: Building Contractor Registration

Clearinghouse Rule No.: 10-039

The Wisconsin Department of Commerce adopts an order to repeal Comm 5.30 (1) (c) (intro.) and 1.; to renumber Comm 5.12 (2), (2m), and (3) to (7) and Comm 5.30 (1) (b); to renumber and amend Comm 5.12 (1) and Comm 5.30 (1) (c) 2. and 3.; to amend Comm 5.02 Table 5.02 (partial), Comm 5.06 Table 5.06 (partial), Comm 5.125 (1), (2) (4) to (8) and Comm 5.125 (1) (a), and Comm 5.35 (1), (2) (intro.), (3), (5) (intro.) and (6); and to create Comm 5.125 (3), Comm 5.30 (1) (a) Note, Comm 5.30 (1) (b) 1. j. and k., Comm 5.30 (1m) (intro.) and (a) and Comm 5.30 (4) (e) Note relating to building contractors and affecting small business.

Analysis of Rule

1. Statutes interpreted.

Statutes Interpreted: s. 101.147, Stats., as affected by 2009 Wisconsin Act 28.

2. Statutory authority.

Statutory Authority: ss. 101.02 (1) and 101.147, Stats., as affected by 2009 Wisconsin Act 28.

3. Related statute or rule.

None.

4. Explanation of agency authority.

Under chapters 101 and 145 of the Wisconsin Statutes, the Department of Commerce 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.

These statutes also provide the Department with oversight of various mechanical systems and devices to protect public safety and health. The Department administers and enforces codes that address amusement rides, ski lifts and tows, boilers and pressure vessels, gas systems and mechanical refrigeration systems to accomplish its statutory objectives.

The construction trades and equipment installers share a responsibility with owners and designers to ensure that the buildings and equipment relative to the respective trade's work, do not pose risk to public safety and health.

5. Summary of proposed rules.

Effective October 2, 2009, the various construction trades involved in building or modifying these types of structures are required to register as a building contractor. The department

administers a registration program for businesses engaged in building construction as contractors or subcontractors under ch. Comm 5. The proposed rules expand the building contractor registration which is a credential for a contracting business and is not required for each partner or employee involved with physically constructing or modifying the structures.

In light of Wisconsin Act 28, the definition of “construction business” has been revised to apply to trades that are regulated by departmental codes. The proposed rules require the registration of trades and businesses that construct, install or alter mechanical equipment and devices such as boilers, gas systems, piping and mechanical refrigeration systems serving a building or structure. In addition, the proposed rules expand the registration requirement to those trades or businesses involved in the construction, installation or alteration of permanent devices or structures regulated under the amusement rides code and the sanitation code.

The proposed rules create administrative procedures and a forfeiture process for those persons or entities doing construction- or installation-related work without a registration number. The forfeitures would apply to the building contractor registration and to the other business contractor credentials currently recognized in lieu of the building contractor registration.

In addition, the proposed rules consolidate two types of weld tester certifications into one category.

6. Summary of, and comparison with, existing or proposed federal regulations.

An Internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* did not find any federal regulations relating to contractor registration.

7. Comparison with rules in adjacent states.

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

- **Illinois** – Except for roofers, the state of Illinois does not have any regulations for the licensure of building contractors.
- **Iowa** – All individual contractors and businesses performing construction work in the state of Iowa are required to be registered. The 2-year registration fee is \$25. The prerequisites for registration include the demonstration of compliance with worker’s compensation insurance requirements and with unemployment tax requirements.

If a contractor does not register or falsifies registration information, then Iowa assesses a penalty of not more than \$500 for a first violation and not more than \$5,000 for a second or subsequent violation.

- **Michigan** –Persons and businesses that contract with property owners to build new homes or remodel homes are required to have licenses in the state of Michigan. The license types are 1) residential builder and 2) residential maintenance and alteration contractor, which is restricted to perform only specific trades and services. The fee is \$225 for a 3-year license,

and applicants must complete 60 hours of approved education and pass an examination. Michigan does not have a licensing law regulating builders of commercial buildings.

In Michigan, a person who is not licensed as a residential builder or a residential maintenance and alteration contractor can be found guilty and fined as follows:

- In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000 or more than \$25,000, or imprisonment for not more than 1 year, or both.
- In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000 or more than \$25,000, or imprisonment for not more than 2 years, or both.
- In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000 or more than \$25,000, or imprisonment for not more than 4 years, or both.
- **Minnesota** – The state of Minnesota requires certifications for a person or business that contracts 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 requires a qualifying person to take the required examination and fulfill the continuing education requirements for the business.

Effective January 1, 2009, the Minnesota Independent Contractor Certification Law requires building contractors to certify that they are independent contractors versus employees using a “9 Items” test related to Worker’s Compensation. The fee for a 2-year certification is \$250.

Minnesota assesses a penalty of up to \$5,000 for each violation if a person performs work without first obtaining a certificate or falsifies or alters a certificate. The penalty also applies to anyone who uses coercion, misrepresentation or fraudulent means to require another individual to adopt independent contractor status.

8. Summary of factual data and analytical methodologies.

The proposed rules were developed by reviewing the provisions under 2009 Wisconsin Act 28 in conjunction with the current rules relating to contractor registration under s. Comm 5.30. For consistency, the proposed forfeitures are modeled after other penalties currently used by the department to enforce compliance with other construction-related licenses, certifications and registrations.

9. Effect on small business including analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

The proposed rules implement the mandates imposed by 2009 Wisconsin Act 28. The effect on small businesses is minor and ensures that the construction trades comply with Wisconsin worker’s compensation insurance and unemployment tax requirements. Identifying contractor businesses will help prevent unfair competition which is a common problem for contractors.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency contact person.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Place where comments are to be submitted and deadline for submission.

The hearing record on this proposed rulemaking will remain open until May 17, 2010. Written comments on the proposed rules may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or email jim.quast@wisconsin.gov.

SECTION 1. Comm 5.02 Table 5.02 lines 19. and 20. are amended to read:

**Table 5.02
FEES
(Partial Table)**

	License, Certification or Registration Category	Type	Application Fee	Examination Fee	License, Certification or Registration Fee
19.	Weld Test Conductor – Physical	Certification	\$15	\$20	\$80
20.	Weld Test Conductor – Radiographic	Certification	\$15	\$20	\$80

SECTION 2. Comm 5.06 Table 5.06 lines 14. and 15. are amended to read:

**Table 5.06
TERMS
(Partial Table)**

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
14.	Weld Test Conductor – Physical	4 years	Date of Issuance	NA
15.	Weld Test Conductor – Radiographic	4 years	Date of Issuance	NA

SECTION 3. Comm 5.12 (2), (2m), and (3) to (7) are renumbered Comm 5.125 (1), (2) (4) to (8) and Comm 5.125 (1) (a) as renumbered is amended to read:

Comm 5.125 Penalties. Administrative forfeitures. (1) PLUMBING FORFEITURES.

(a) Pursuant to s. 145.12 (5), Stats., the department may assess a forfeiture in the amount listed in pars. (a) (b) to (i) to a violator of the licensing requirements under s. 145.06, Stats.

SECTION 4. Comm 5.12 (1) is renumbered Comm 5.12 and amended to read:

Comm 5.12 Penalties. (1) GENERAL.

In addition to the forfeitures provided for in sub. (2) s. Comm 5.125, penalties for violations of this chapter may be assessed in accordance with the respective penalty provisions in the statutes, depending upon the license, certification or registration category or activity involved.

SECTION 5. Comm 5.125 (3) is created to read:

Comm 5.125 (3) CONTRACTOR FORFEITURES.

(a) Pursuant to s. 101.147 (3), Stats., the department may assess a forfeiture in the amount listed in pars. (b) and (c) to a violator of the requirements for any of the following licenses, certifications or registrations:

1. Building contractor, pursuant to s. 101.147 (1), Stats.
2. Dwelling contractor, pursuant to s. 101.654 (1) (a), Stats.
3. Dwelling contractor-restricted, pursuant to s. 101.654 (1) (a), Stats.
4. Manufactured home manufacturer, pursuant to s. 101.95, Stats.
5. Manufactured home dealer, pursuant to s. 101.951 (1), Stats.
6. Manufactured home installer, pursuant to s. 101.96 (2), Stats.
7. Electrical contractor, pursuant to s. 101.862 (1), Stats.
8. Electrical contractor-restricted, pursuant to s. 101.862 (1), Stats.
9. HVAC contractor, pursuant to s. 101.178 (2), Stats.
10. An elevator contractor, pursuant to s. 101.984 (1), Stats.

(b) The amount of forfeiture assessed against an individual or entity that does not hold the appropriate type of license, certification or registration required under par. (a) shall be subject to one of the following:

1. First offense - \$250.
2. Second offense - \$500.
3. Third and subsequent offense - \$1,000.

(c) The amount of forfeiture assessed against an individual or entity that holds one of the credentials listed in par. (a) and that contracts with another individual or entity to engage in construction business activities where that other individual or entity is required to hold a credential required under s. Comm 5.30 (1) (a) but does not shall be subject to one of the following:

1. First offense - \$250.
2. Second offense - \$500.
3. Third and subsequent offense - \$1,000.

SECTION 6. Comm 5.30 (1) (a) Note is created to read:

Comm 5.30 (1) (a) Note: The building contractor registration is a business credential that does not negate the responsibility to obtain and hold other credentials required under this chapter for specific work.

SECTION 7. Comm 5.30 (1) (b) 1. j. and k. are created to read:

Comm 5.30 (1) (b) 1. j. A retail gas supplier license.

k. A retail gas supplier-restricted license.

SECTION 8. Comm 5.30 (1) (c) (intro.) and 1. are repealed.

SECTION 9. Comm 5.30 (1) (c) 2. and 3. are renumbered Comm 5.30 (1m) (b) and (c) and Comm 5.30 (1m) (c), as renumbered, is amended to read:

Comm 5.30 (1m) (c) “One- and 2- family dwelling” means any building that contains one or 2 dwelling units that construction of which commenced before, on or after December 1, 1978.

SECTION 10. Comm 5.30 (1m) (intro.) and (a) are created to read:

Comm 5.30 (1m) Under this section:

(a) 1. “Construction business” means a trade that constructs, installs, or alters any element, component, material or device within or serving a building or structure where the element, component, material or device is regulated under one of the following codes:

- a. Chapter Comm 16, Electrical.
- b. Chapters Comm 20 to 25, Uniform Dwelling.
- c. Chapter Comm 28, Smoke Detectors.
- d. Chapter Comm 33, Passenger Ropeways.
- e. Chapter Comm 40, Gas Systems.
- f. Chapter Comm 41, Boilers and Pressure Vessels.
- g. Chapter Comm 43, Anhydrous Ammonia.
- h. Chapter Comm 45, Mechanical Refrigeration.
- i. Chapters Comm 61 to 66, Commercial Buildings.
- j. Chapters Comm 81 to 84, Plumbing.
- k. Chapter Comm 90, Public Swimming Pools and Water Attractions.

2. Notwithstanding subd. 1., "construction business" includes the construction, installation or alteration of permanent devices or structures where the structure or device is regulated under one of the following codes:

- a. Chapter Comm 34, Amusement Rides.
- b. Chapter Comm 91, Sanitation.

3. "Construction business" includes the activity of installing interior wall coverings in commercial buildings.

4. "Construction business" does not include any of the following:

- a. The design of a building or structure.
- b. The delivery of building supplies or materials.
- c. The manufacture of a building product not on the building site.
- d. Nonprofit, volunteer-based programs.

SECTION 11. Comm 5.30 (4) (e) Note is created to read:

Comm 5.30 (4) (e) Note: See Comm 61.295 (2) regarding the issuance of building permits by municipalities for the construction of commercial buildings.

SECTION 12. Comm 5.35 (1), (2) (intro.), (3) (a), (5) (intro.) and (6) are amended to read:

Comm 5.35 (1) GENERAL. No person may conduct welding tests for the purpose of qualifying structural steel welders under s. Comm 5.34 unless the person holds a certification issued by the department as a certified weld test conductor ~~physical or a certified weld test conductor radiographic~~.

(2) APPLICATION FOR EXAMINATION. A person applying to take a weld test conductor ~~physical or weld test conductor radiographic~~ certification examination shall submit all of the following:

(3) EXAMINATION. (a) The person seeking to obtain a weld test conductor ~~physical or weld test conductor radiographic~~ certification shall take and pass an examination in accordance with s. Comm 5.09.

(5) RESPONSIBILITIES. A person who conducts welding tests for qualifying structural steel welders under s. Comm 5.34 as a certified weld test conductor ~~physical or weld test conductor radiographic~~ shall do all of the following:

(6) RENEWAL. (a) A person may renew his or her certification as a weld test conductor ~~physical or weld test conductor radiographic~~.

(b) A weld test conductor ~~physical or weld test conductor~~ radiographic certification shall be renewed in accordance with s. Comm 5.07.

END

EFFECTIVE DATE

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