

Clearinghouse Rule 07-007

The Department of Commerce proposes an order to amend Comm 5.01 (4) (a), Comm 5.02 Table 5.02 line 9., Comm 5.06 Table 5.06 line 9., and Comm 5.10 (1) (b) (intro.); to repeal and recreate Comm 5.31, Comm 20.09 (2) (b), and Comm 20.09 (5); and to create Comm 5.02 Table 5.02 line 9m., Comm 5.06 Table 5.06 line 9m., Comm 5.10 (1) (a) 13., and Comm 5.315, relating to certification of dwelling contractors, and affecting small businesses.

Analysis of Proposed Rules

1. Statutes Interpreted.

Sections 101.63 and 101.645, Stats., and 2005 Wisconsin Act 200

2. Statutory Authority.

Sections 101.63 and 101.645, Stats., and 2005 Wisconsin Act 200

3. Related Statute or Rule.

None.

4. Explanation of Agency Authority.

Section 101.63 (2m), Stats., empowers the department to promulgate certification rules regarding the financial responsibility of contractors who obtain building permits for work on dwellings. The enactment of 2005 Wisconsin Act 200 further directed the department to promulgate rules establishing educational obligations for contractors who obtain building permits for work on dwellings.

5. Summary of Proposed Rules.

Under current rules the department issues dwelling contractor financial responsibility certifications to businesses and entities that obtain building permits to perform work on one- and two-family dwellings no matter when the structure was initially constructed. The department is proposing to create a new separate certification, dwelling contractor qualifier, issued to an individual in order to fulfill the educational obligations established under 2005 Wisconsin Act 200. The qualifier certification term is proposed for one year and renewal of the certification is contingent upon the holder obtaining 6 hours continuing education. The proposed rules also provide grandfathering provisions for obtaining the contractor qualification certification.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

The proposed rules address administrative issues unique to the department's rules. There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

7. Comparison with Rules in Adjacent States.

An internet search of the State of Illinois' website did not reveal the existence of a state-level licensing or certification for dwelling contractors or home builders.

An internet search of the State of Iowa's website revealed that there is not licensing or certification for building contractors or home builders just a simple registration program that does not require educational prerequisites.

The State of Michigan's website indicates that Michigan licenses residential builders and maintenance and alteration contractors. However, the qualifications for the license and its renewal do not appear to require the fulfillment of any educational obligations.

The State of Minnesota website indicates that Minnesota requires residential building contractor and remodeling companies to obtain a license. Each company must designate one individual as a qualifying person who must take the required examination and fulfill the 7-hours of continuing education required to renew the license.

8. Summary of Factual Data and Analytical Methodologies.

In developing the proposed rules the department reviewed the language of 2005 Wisconsin Act 200 together with the existing laws under ss. 101.63 and 101.654, Stats. and the existing administrative rules under s. Comm 5.31. The department also received input from the statutorily-created Contractor Certification Council. The council's composition reflects a variety of organizations whose memberships include many types of small businesses. The department utilizes advisory councils to gather information on potential impacts in complying with both the technical and administrative requirements of its codes. A responsibility of council members is to bring forth concerns their respective organizations may have with the proposed rules, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in Safety and Building Division.)

The Contractor Certification Council is comprised of:

Craig Rakowski, Wauwatosa, Wisconsin Builders Association

Jay Statz, Middleton, National Association of the Remodeling Industry

Joseph Welch, Pewaukee, Wisconsin State Council of Carpenters

9. 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 2005 Wisconsin Act 200. The Act establishes educational obligations for contractors who need to obtain building permits involving work

on one- and two- family dwellings. Currently, a building permit is required for the construction of every new one- and two- family dwelling. The necessity to obtain a building permit for alterations and additions to existing dwellings is at the discretion of each municipality in terms when, if and for what type of work a building permit is required before starting the project. In light of this, the Act and the proposed rules potentially affect a wide variety of contractors and trades, including home builders and contractors, remodeling businesses and roofing contractors. The cost of the department's proposed annual contractor certification is \$30. The renewal of the certification is contingent upon the holder obtaining at least 6 hours of continuing education. The continuing education, upon approval by the department, can be provided by anyone. The fee, if any, for a continuing education course or seminar is left to the discretion of the course/seminar provider. The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

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

SECTION 1. Comm 5.01 (4) (a) is amended to read:

Comm 5.01 (4) (a) Dwelling contractor ~~financial responsibility~~.

SECTION 2. Comm 5.02 Table 5.02 line 9. is amended 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
9.	Dwelling Contractor Financial Responsibility	Certification	\$10	NA	\$30 \$25

SECTION 3. Comm 5.02 Table 5.02 line 9m. 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
9m.	Dwelling Contractor Qualifier	Certification	\$10	NA	\$30

SECTION 4. Comm 5.06 Table 5.06 line 9. is amended to read:

Partial Table 5.06

**Table 5.06
TERMS**

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
9.	Dwelling Contractor Financial Responsibility	1 year	Date of Issuance	NA

SECTION 5. Comm 5.06 Table 5.06 line 9m. is created to read:

Partial Table 5.06

**Table 5.06
TERMS**

	License, Certification or Registration Category	Term	Expiration Date	Continuing Education Cycle
9m.	Dwelling Contractor Qualifier	1 year	Date of Issuance	3 Months Prior to Date of Expiration

SECTION 6. Comm 5.10 (1) (a) 13. is created to read:

Comm 5.10 (1) (a) 13. If registered under s. Comm 5.31 as a dwelling contractor, is responsible for any of the following:

- a. Failed to hold or to engage, as an employee, a person who holds a dwelling contractor qualifier certification under s. Comm 5.315 in obtaining a building permit.
- b. Engaged in the construction of a dwelling without a uniform building permit when required under s. Comm 20.08.
- c. Convicted of a crime related to the construction of a dwelling.
- d. Adjudged bankrupt on 2 or more occasions.

SECTION 7. Comm 5.10 (1) (b) (intro.) is amended to read:

Comm 5.10 (1) (b) *Notice of denial, suspension or revocation.* Except as provided under s. 101.654 (4), Stats., relative to a dwelling contractor ~~financial responsibility~~ certification, and par. (c), a notice of denial, suspension or revocation shall be sent to the applicant or the license, certification or registration holder. The notice shall include all of the following:

SECTION 8. Comm 5.31 is repealed and recreated to read:

Comm 5.31 Dwelling contractor. (1) GENERAL. Pursuant to s. 101.654 (1) (a), Stats., no person may obtain a building permit for a one- or 2-family dwelling unless the person complies with all of the following, except as provided under s. 101.654 (1) (b) and (c) 2., Stats.,:

(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.

(b) Holds or engages, as an employee, a person who holds a certification issued by the department as a dwelling contractor qualifier.

Note: Section 101.654 (1) (b), Stats., exempts an owner of a dwelling who resides or will reside in the dwelling and who applies for a building permit to perform work on the dwelling from obtaining a dwelling contractor financial responsibility certification.

Note: Section 101.654 (1) (c) 2., Stats., reads: “The continuing education requirements under par. (a) and the rules promulgated by the department under sub. (1m) do not apply to any person who holds a current license issued by the department at the time that the person obtains a building permit if the work the person does under the permit is work for which the person is licensed.”

(2) APPLICATION FOR DWELLING CONTRACTOR CERTIFICATION. A person applying for a dwelling contractor certification or a dwelling contractor - restricted certification shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and a certification fee in accordance with s. Comm 5.02, Table 5.02.

Note: A dwelling contractor - restricted certification will be issued to an individual who applies using a bond of less than \$25,000. The card issued by the department for a dwelling contractor - restricted certification will read "Financial Responsibility-by a bond under \$25,000 Certification".

(3) QUALIFICATIONS FOR CERTIFICATION. (a) A person applying for a dwelling contractor certification or a dwelling contractor - restricted certification shall provide all of the following:

1. A statement certifying that the person complies with the worker's compensation requirements and unemployment compensation requirements.

2. Evidence of compliance with the liability or bond insurance requirements as specified under s. 101.654 (2) and (2m), Stats.

Note: See the appendix for a reprint of the requirements under s. 101.654 (2) and (2m), Stats.

(b) The person applying for a dwelling contractor certification or a dwelling contractor - restricted certification shall be the owner of the contracting business, a partner in the contracting business applying on behalf of a partnership, or the chairman of the board or chief executive officer applying on behalf of the contracting corporation.

(4) RESPONSIBILITIES. (a) A person who holds a dwelling contractor certification, 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, 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, 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.

(5) RENEWAL. (a) Pursuant to s. 101.654 (3), Stats., a dwelling contractor certification, 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, dwelling contractor - restricted certification, dwelling contractor financial responsibility certification or dwelling contractor financial responsibility – restricted certification.

2. A dwelling contractor certification, 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 5.315 is created to read:

Comm 5.315 Dwelling contractor qualifier. (1) GENERAL. The purpose of the dwelling contractor qualifier certification is to provide proof of fulfilling the continuing education obligations to the issuers of building permits as required under s. 101.654 (1) (a), Stats.

(2) APPLICATION. A person applying for a dwelling contractor qualifier certification shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and a certification fee in accordance with s. Comm 5.02, Table 5.02.

(c) One of the following:

1. Evidence that the person has completed at least 12 hours in an approved course in dwelling construction within one year prior to the date of application. The course shall include instruction in at least the following subject matter and one or more tests on at least the following subject matter:

a. Construction laws and codes.

b. Construction business practices.

2. a. A statement which may be verified by the department that the person either was an eligible applicant for or was the contact person for a dwelling contractor financial responsibility certification or dwelling contractor financial responsibility - restricted certification at any time between April 11 and April 14, 2006.

b. This subdivision does not apply after two years from the effective date of the rule, (revisor to insert date).

c. The eligibility provisions under subpar. a. may be used only once to obtain a dwelling contractor qualifier certification.

Note: Under the administrative rules applicants for the dwelling contractor financial responsibility certifications are to be the business owners, partners, chairmen of the boards and chief executive offices. The Safety and Buildings Division has on file a record of who held a dwelling contractor financial responsibility certification or a dwelling contractor financial responsibility – restricted certification any time between April 11, 2006 and April 14, 2006.

(3) RENEWAL. (a) 1. A person may renew his or her certification as a dwelling contractor qualifier.

2. A dwelling contractor qualifier certification shall be renewed in accordance with s. Comm 5.07.

(b) 1. The renewal of a certification as a dwelling contractor qualifier shall be contingent upon the individual obtaining at least 6 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.

2. A person who holds a certification as a dwelling contractor qualifier may apply to the department for waiver of the continuing education requirements under subd. 1. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department.

SECTION 10. Comm 20.09 (2) (b) is repealed and recreated or amended to read:

Comm 20.09 (2) (b) Additions, alterations and repairs. 1. When required by local ordinance, permits for additions, alterations and repairs shall be filed with municipalities and counties in accordance with their adopted ordinances.

Note: The Department of Commerce requires copies of permits that are filed for new dwelling construction only. Any permits issued for additions, alterations, repairs, garage construction, etc. are not required to be filed with the department.

2. Pursuant to s. 101.65 (1m), Stats., a building permit required under subd. 1. may not be issued unless the conditions of sub. (5) (c) 1. and 2. are satisfied, except as provided under s. 101.654 (1) (b), Stats.

3. Permits for additions, alterations and repairs are not required in municipalities where the department has jurisdiction under s. 101.651 (3) (b), Stats.

SECTION 11. Comm 20.09 (5) is repealed and recreated to read:

Comm 20.09 (5) APPROVAL OF PLANS AND ISSUANCE OF PERMITS. (a) 1. If the municipality or the registered UDC inspection agency administering and enforcing this code determines that the plans submitted for a one- or 2-family dwelling substantially conform to the provisions of this code and other legal requirements an approval shall be issued.

2. The plans shall be stamped “conditionally approved” by a certified inspector who holds the respective credential for the plans reviewed.

3. One copy shall be returned to the applicant and one copy shall be retained by the municipality or the registered UDC inspection agency administering and enforcing this code.

4. The conditions of approval shall be indicated by a letter or on the permit application.

5. All conditions of the approval shall be met during construction.

(b) A Wisconsin uniform building permit shall be issued if the requirements for filing and fees are satisfied and the plans have been conditionally approved.

(c) Pursuant to s. 101.65 (1m), Stats., a Wisconsin uniform building permit may not be issued to a person unless the person complies with all of the following, except as provided under s. 101.654 (1) (b) and (c) 2., Stats.,:

Note: Section 101.654 (1) (b), Stats., exempts an owner of a dwelling who resides or will reside in the dwelling and who applies for a building permit to perform work on the dwelling from obtaining a dwelling contractor financial responsibility registration. Under s. 101.65 (1r), an owner who obtains a building permit needs to sign a statement advising the owner of the potential consequences of hiring a contractor to perform work under the permit who is not bonded or insured under s. 101.654 (2) (a), Stats.

Note: Section 101.654 (1) (c) 2., Stats., reads: “The continuing education requirements under par. (a) and the rules promulgated by the department under sub. (1m) do not apply to any person who holds a current license issued by the department at the time that the person obtains a building permit if the work the person does under the permit is work for which the person is licensed.”

1. Holds one of the following credentials issued by the department:

a. A dwelling contractor certification.

b. A dwelling contractor - restricted certification.

c. A dwelling contractor financial responsibility certification.

d. A dwelling contractor financial responsibility – restricted certification.

2. Holds or engages, as an employee, a person who holds a certification issued by the department as a dwelling contractor qualifier.

(d) A Wisconsin uniform building permit shall expire 24 months after issuance if the dwelling exterior has not been completed.

(e) Pursuant to s. 101.63 (7), Stats., the name and license number of the Wisconsin master plumber responsible for the installation of plumbing shall be entered on the Wisconsin uniform building permit by the issuing entity at the time of issuance.

(f) 1. Construction may begin on footings and foundations prior to the issuance of the Wisconsin uniform building permit where a permit to start construction is obtained.

2. Upon submittal of the application for a permit to start construction, a site plan, complete footing and foundation information including exterior grading, and a fee, the municipality or a registered UDC inspection agency enforcing this code may issue a permit to start construction of the footings and foundation.

3. The issuance of a permit to start construction shall not influence the approval or denial of the Wisconsin uniform building permit application.

(g) Pursuant to s. 145.195, Stats., if the proposed construction requires connection to a private onsite wastewater treatment system, a Wisconsin uniform building permit may not be issued unless conformance with s. Comm 83.25 (2) has first been determined.

Note: See appendix for a reprint of s. Comm 83.25 (2).

(h) *Posting of permit.* 1. The Wisconsin uniform building permit shall be posted in a conspicuous place at the dwelling site.

2. The Wisconsin uniform building permit seal shall be affixed either to the posted permit or to the Wisconsin uniform building permit application. The permit seal number shall appear on both documents.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.) and (b), Stats these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, except ss. Comm 5.31 (1) (b) and Comm 20.09 (5) (c) 2. which shall take effect on January 1, 2008.
