

**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	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.	See response under Boycks, oral #3.
oral #2	Dan Gengler, Wisconsin Fire Protection Coalition, Madison	Is in favor of the proposed registry of contractors as a positive step in the goal of protecting public health, safety and welfare. Considers the \$100 registration fee to be a negligible cost in the face of ensuring better safety and accountability among construction trades. Raises the concern that the lack of enforcement mechanisms in the proposal may hinder the ability to produce intended objectives.	Position noted.
oral #3	Brad Boycks, Wisconsin Builders Association Madison	Raises the following points on behalf of the association: <ul style="list-style-type: none"> • Concern that the \$100 cost to register will add an additional cost to consumers when the industry is down. • Questions the department's authority for the administrative rule in light of the failure of 2007 SB228 and AB446. • Believes that housing report should be available pursuant to s. 227.115, Stats. 	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. 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. 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

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	Boycks continued	<ul style="list-style-type: none"> • Suggests the creation of a website that people can sign up at no cost to be notified about department updates. • 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. • 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. 	<p>the registration period and the fact that various contractors and subcontractors are already credentialed 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. 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. 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>
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"> • 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. • Applications should incorporate the 9 factor test to determine whether an individual is an employer 	<p>Position noted.</p> <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>

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	Reihl continued	<ul style="list-style-type: none"> • Applications should highlight the penalty and fines for submitting fraudulent information on the application. <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>	The code requirements for other business credentials have been modified to include the responsibility of not contracting with other construction businesses unless registered.
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</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

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	Boullion continued	<p>required to submit for registration.</p> <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"> • Contractors be allowed at least one business day to rectify the matter. • Only be applied to the work of the offender and not the entire job. • Their procedures be uniformly applied for state certified building inspectors. 	<p>information.</p> <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.</p> <p>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. See previous response.</p> <p>Stop work orders under ch. Comm 3, can only be utilized by department inspectors.</p>
written #1	Dennis and Jeff Rasmussen, Andry Rasmussen and Sons, Inc. Cable	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.	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.
written #2	Dan Birenkott, Certified Soil Tester Sun Prairie	Opposing a registry that would cost plumbing companies \$100 every 4 years.	Position noted.
written #3	John and Dave Jentges, Steve Muskowski Jentges Excavating and Pumps, Inc Belgium	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.	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 #4	James K. Thompson	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,	Position noted. There are many examples under statutes where both the business and individual are required to be credentialed.

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		permits and inspections of the work they perform	
written (email) #5	Sue Schambureck Madson Tiling and Excavating, Inc. Manitowoc Schambureck continued	<p>Questions the need for the proposed registration. Feels another fee is not necessarily justifiable.</p> <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 credentialed 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>Position noted.</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. The credentials cited are examples of business credentials</p>
written (email) #6	Randy M Soper, Mike's Plumbing, Heating, & Electric, Inc. Pulcifer	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.	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) #7	Mark A Ethrhiem, Onalaska	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.	See response under Boycks, oral #3.
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>Indicates the his company carries the Dwelling Contractor certification and Dwelling Contractor Qualifier certification.</p>	See response under Boycks, oral #3.
written (email) #9	Mike Check Mike Check Builders	<p>Opposes the proposed contractor registration rule, contending:</p> <ul style="list-style-type: none"> • The cost is a factor in this economy • The legislature failed to pass two previous bills that were similar in nature and content. • There are means of communicating changes to codes and professional updates rather than registering interested parties. 	<p>See response under Boycks, oral #3.</p> <p>Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.</p>

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written (email) #10	Chris Nelson Nelson Construction Service Balsam Lake	The company does not approve or support the proposed contractor registration rule to add additional burden on small business and contractors.	Position noted. Businesses holding a Dwelling Contractor certification are exempted from needing the Building Contractor registration.
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,	Feels the proposed registration is a bad idea, especially in this	Businesses holding a Dwelling Contractor certification

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	Seidl Construction, Inc. Luxemburg	downturned economy. Uses subcontractors that have a proven track record that work hard to give a good job at a fair price.	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 credentialed. Obligations for businesses are separate and distinct from those for individuals.
written (email) #18	John Stinson, Northland Seamless Gutters, Inc. Hayward	Asks that the contractor registration rule be reconsidered, in light the 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 Boycks, 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 Boycks, 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.	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

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		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.	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 Boycks, oral #3.
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. Reeds ville	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	See response under Boycks, oral #3.

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		enacted.	
written #28	James Macejkovic, Building Service Inc. Milwaukee Maceikovic continued	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"> • A task force to identify what information is to be collected. • A formal review process to <ul style="list-style-type: none"> ○ E-verify with Homeland Security to make sure the social security number and name match ○ Verify the address ○ Verify phone number ○ Cross check workers compensation insurance ○ Check references • Identifying by rule the penalties for false information • Identifying as a contractor responsibility the use of registered and legitimate subcontractors. • Fines on the spot for violators. 	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. The rules have been modified to incorporate this concept. The department does not have the ability to issue fines for these registrations.
written (email) #29	Pat	Opposes the registration requirements for selected subcontractors. Contends that the department should be simplifying regulations and promoting small business.	Opposition noted.
written (email) #30	Paul Soletski, Bay Lake Builders & Development	Does not think that this is the time to proceed with contractor registration. Questions the department's authority to take portions of proposed legislation, SB228 and AB446, that were not enacted and move forward. Raises a concern of DWD or the legislature enacting similar rules. 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	See response under Boycks, oral #3.

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		<p>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>	
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.
written (email) #32	Robert Charnitz	<p>As a licensed master plumber-restricted sewer, does not see the need for a business license.</p> <p>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.</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> <p>There is no requirement that a plumbing business must be owned or run by a master plumber.</p>
written #33	Steve Treu, E & B Insulation Sparta	<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.
written #34	Timothy Voeller, Bielinski Homes Waukesha	<p>Opposes the proposed contractor registration rule.</p> <p>Questions the department's authority for the administrative rule in light of the failure of 2007 SB228 and AB446.</p> <p>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.</p>	See response under Boycks, oral #3.

**DEPARTMENT OF COMMERCE
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		Suggests the creation of a website that people can sign up at no cost to be notified about department updates.	
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".