

Report From Agency



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.
