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

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Analysis of Rule

1. Statutes Interpreted

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

2. Statutory Authority

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

3. Related Statute or Rule

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

4. Explanation of Agency Authority

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

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

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

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

5. Summary of Proposed Rules

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

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

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

An internet-based search of the code of federal regulations and the federal register did not indentify any federal requirements relating to contractor registrations.

7. Comparison with Rules in Adjacent States

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

<u>Illinois:</u>
The state of Illinois does not have any regulations regarding the licensure of building contractors, except roofers.

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

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

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

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

8. Summary of Factual Data and Analytical Methodologies

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

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

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

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

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

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

10. Agency Contact.

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

11. Public Hearing Comments.

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

* * * *

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

Comm 5.01 (4) (i) Building contractor.

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

Table 5.02
FEES

	License, Certification or Registration Category	**Type**	**Application Fee**	**Examination Fee**	**License, Certification or Registration Fee**
	Subchapter III				
8m.	Building Contractor	Registration	$15[a]	NA	$100

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

[a] No fee if application is submitted electronically; $15 application fee for a late renewal per s. Comm 5.07 (2) (b) 1. a.

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

Partial Table 5.06

Table 5.06
TERMS

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

SECTION 5. Comm 5.30 is created to read:

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

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

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

a. A dwelling contractor certification.

b. A dwelling contractor – restricted certification.

c. A manufactured home manufacturer license.

d. A manufactured home dealer license.

e. A manufactured home installer license.

f. An electrical contractor certification.

g. An electrical contractor – restricted certification.

h. An HVAC contractor registration.

i. An elevator contractor license.

2. A person or entity that works only on real estate or property they own or lease.

(c) Under this section:

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

Note: Examples of construction businesses that are to register.

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

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

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

(2) APPLICATION FOR BUILDING CONTRACTOR REGISTRATION. A person applying for a building contractor registration shall submit all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A dwelling contractor certification.

2. A dwelling contractor - restricted certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 28. Comm 61.295 is created to read:

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

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

END

* * * *