

 **09hr_JCR-AR_Misc_pt09**



Details: Emergency Rule extension requests by Department of Commerce.
(FORM UPDATED: 08/11/2010)

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**

January 8, 2009

✓ Senator James Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, Capitol
Madison, WI 53707

Representative Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North, Capitol
Madison, WI 53707

Dear Senator Holperin and Representative Zepnick:

Due to unprecedented levels of flooding and other storm damage to public infrastructure and facilities, the Department of Commerce adopted an emergency rule in July 2008 that has enabled the Department to use any available Community Development Block Grant funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding. The emergency rule took effect on July 16, 2008, and is currently in effect. The emergency rule will expire on February 10, 2009, unless an extension is granted by the Joint Committee for Review of Administrative Rules. *15 million*
4 million
back
↓

In conjunction with adopting the emergency rule and pursuant to chapter 227 of the Statutes, the Department filed a proposed, identical permanent rule with the Wisconsin Legislative Council to replace the emergency rule. A public Hearing on that rule was held on November 13, and we expect to file the permanent rule with the Legislature later this month. *11 million of*
initial

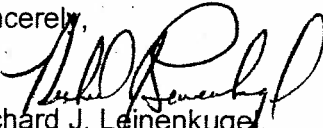
Due to the time factors associated with the rulemaking process in chapter 227 of the Statutes, the permanent rule cannot be adopted and become effective prior to the expiration of the emergency rule. In addition, the Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under section 227.24 (2) of the Statutes, in order to provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please do not hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed for your reference.

Sincerely,


Richard J. Leinenkugel,

Secretary

Enc.

25 mil - federal funds

The Wisconsin Department of Commerce adopts an order to amend Comm Table 108.6-1, 108.07 (5), 108.22 (1), and 154.06 (intro.), relating to emergency assistance grants in the community development block grant program, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Sections 560.02 (4), 560.04, 560.045, and 560.9809

2. Statutory Authority.

Sections 560.02 (4), 560.04, 560.045, and 560.9809

3. Explanation of Agency Authority.

The Department is the designated agency to administer the federally funded Small Cities Community Development Block Grant (CDBG) Program for Wisconsin. These CDBG funds can be used statewide, except in "entitlement" communities that also receive annual CDBG funding directly from the US Department of Housing and Urban Development (cities with populations above 50,000 and, with only a few exceptions, Milwaukee, Dane, and Waukesha Counties). Federal regulations require that the Department submit an Annual Plan describing the State's intended use and distribution of the CDBG funds based on any State regulations and public input. The Wisconsin administrative rules that are authorized by the above statutes set forth the criteria, process, and limitations for distributing CDBG funds.

4. Related Statute or Rule.

The Department has statutes and rules for other programs associated with housing assistance and community development, but none of these programs fund emergency assistance for housing repair or public infrastructure/facility repair or replacement.

5. Plain Language Analysis.

The rules in this order repeal current limits on emergency assistance grants in the CDBG Program. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

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

24 CFR 570.483(d) allows the Department to use CDBG funds for activities that address the national objective of meeting an "urgent local need." The criteria under this objective specify that the funded activities must be designed to alleviate existing conditions

which pose a serious and immediate threat to the health or welfare of the community, and which are of recent origin or recently became urgent. In addition, the Department must determine that the state grant recipient is unable to finance the activity on its own, and that other sources of funding are not available to carry out the activity.

7. Comparison With Rules in Adjacent States.

Michigan

Michigan does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Michigan amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

Minnesota

Minnesota does not set aside CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Minnesota amends their Annual Plan to enable CDBG funds to be used for emergency assistance. The Minnesota Small Cities Development Program does have a policy to limit CDBG funding to \$1.4 million per community for each event.

Iowa

Iowa does not set aside or limit the use of CDBG funds for emergency assistance by state statute or administrative rule. The current Iowa Annual Plan sets aside 5 percent of the CDBG annual allocation for emergency assistance. Iowa amends their Annual Plan if additional funds are needed.

Illinois

Illinois does not set aside or limit the use of CDBG funds for emergency assistance in either state statute or administrative rule or in their Annual Plan submittal to HUD. In the event of a disaster, Illinois amends their Annual Plan to enable CDBG funds to be used for emergency assistance as needed.

8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

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

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

10. Effect on Small Business.

The amended rules are not expected adversely effect small business. Grants to repair or replace public infrastructure and facilities would only have a positive impact.

11. Agency Contact Person.

Jeanne Storm, Wisconsin Department of Commerce, Division of Housing and Community Development, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 264-6110; e-mail Jeanne.Storm@Wisconsin.gov

File reference: Comm 108 and 154/rules, analysis-e

SECTION 1. Comm Table 108.6-1 is amended to read:

TABLE 108.06-1
ANNUAL DISTRIBUTION OF CDBG FUNDS BY GRANT PROGRAM
(Partial table)

Grant Program	Percent of CDBG Funds Set Aside
Emergency grant program (CDBG-EMER)	Up to 5% Available Funds

SECTION 2. Comm 108.07 (5) is amended to read:

Comm 108.07 (5) The maximum amount of CDBG funds that may be awarded to any local government for a natural disaster or catastrophic event as specified under subch. VI shall be ~~\$500,000 per~~ based on the scope of the event and funds available.

SECTION 3. Comm 108.22 (1) is amended to read:

Comm 108.22 (1) The maximum amount of CDBG funds that may be awarded to any local government under this subchapter shall be ~~\$500,000 for each~~ based on the scope of the natural disaster or catastrophic event and funds available.

SECTION 4. Comm 154.06 (intro.) is amended to read:

Comm 154.06 Emergency grants. The department may use ~~up to \$2,000,000 annually from the program funds~~ for emergency housing needs arising from a natural disaster or catastrophic event. A local government interested in applying for an emergency grant under this section shall provide the department with written notice of intent to apply within 90 days after the natural disaster or catastrophic event. The department shall develop emergency fund application requirements as necessary. Applications will be evaluated based on:

(END)

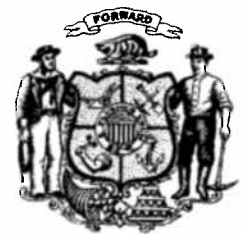
EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper. **(July 16, 2008)**

File reference: Comm 108 and 154/rules 2008e, w.date



WISCONSIN STATE LEGISLATURE



SENATOR JIM HOLPERIN
CO-CHAIR

PO Box 7882
MADISON, WI 53707-7882

(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

PO BOX 8953
MADISON, WI 53707-8953

(608) 266-1707

February 5, 2009

Zach Brandon, Executive Assistant
Wisconsin Department of Commerce
201 West Washington Ave
P.O. Box 7970
Madison, WI 53707

Dear Executive Assistant Brandon:

Re: DOC 560.02 – Request for Rule Extension

The Joint Committee for the Review of Administrative Rules met in Executive Session on February 3, 2009 and adopted the following motion:

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Commerce, relating to emergency assistance grants (EmR0823), for a period of 60 days through April 11, 2009.

Motion Passed 9-0-1.

Pursuant to s. 227.24(2)(c), stats., we are notifying the Legislative Reference Bureau of the Committee's action through copies of this letter.

Sincerely,

Handwritten signature of Jim Holperin in black ink.

Senator Jim Holperin
Senate Co-Chair

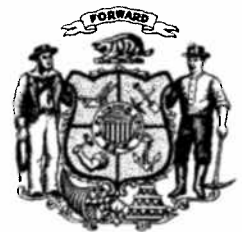
Handwritten signature of Josh Zepnick in black ink.

Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council



WISCONSIN STATE LEGISLATURE





P. O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TTY: Contact Through Relay

Jim Doyle, Governor
Richard J. Leinenkugel, Secretary

June 26, 2009

Senator Jim Holperin, Co-Chair
Joint Committee for Review of
Administrative Rules
Room 409 South, Capitol
Madison, WI 53707

Representative Josh Zepnick, Co-Chair
Joint Committee for Review of
Administrative Rules
Room 219 North, Capitol
Madison, WI 53707

Dear Senator Holperin and Representative Zepnick:


As you may know, this Department adopted an emergency rule earlier this year requiring the registration of building contractors. The emergency rule took effect on March 2, 2009, and is currently in effect. The emergency rule will expire on July 29, 2009, unless an extension is granted by the Joint Committee for Review of Administrative Rules. At this time legislative review committees have take action extending the review period through July 20, 2009.

The Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under s. 227.24 (2), Stats., in order to preserve the public health, safety and welfare.

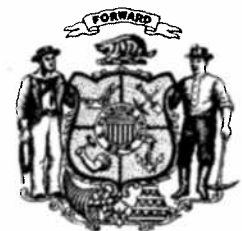
If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

Sincerely,


for Richard J. Leinenkugel
Secretary



WISCONSIN STATE LEGISLATURE





P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD: Contact Through Relay

Jim Doyle, Governor
Richard J. Leinenkugel, Secretary

March 2, 2010

← Senator Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, Capitol
Madison, WI 53707

Representative Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North, Capitol
Madison, WI 53707

Dear Senator Holperin and Representative Zepnick:

In conjunction with Executive Order #288, this Department adopted an emergency rule in 2009 relating to Midwestern disaster area bonds. The emergency rule took effect on November 9, 2009, and is currently in effect. The emergency rule will expire on April 8, 2010, unless an extension is granted by the Joint Committee for Review of Administrative Rules.

In conjunction with adopting the emergency rule and pursuant to chapter 227 of the Statutes, the Department has filed a proposed permanent rule with the Wisconsin Legislative Council (Clearinghouse Rule Number 09-121) to replace the emergency rule. We held a hearing on that rule and the emergency rule on January 25, 2010, and expect to file the permanent rule with the Legislature in March.

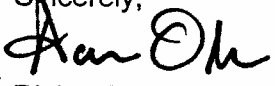
Due to the time factors associated with the rulemaking process in chapter 227 of the Statutes, the permanent rule cannot be adopted and become effective prior to the expiration of the emergency rule. In addition, the Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under section 227.24 (2) of the Statutes, in order to provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please do not hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed for your reference.

Sincerely,


for Richard J. Leinenkugel
Secretary
Enc.

File ref: JCRAR extension request

**ORDER OF THE
DEPARTMENT OF COMMERCE**

EMERGENCY RULE RELATING TO MIDWESTERN DISASTER AREA BONDS

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 3 day
of NOVEMBER, A.D. 2009,
by the Department of Commerce


for Richard J. Leinenkugel, Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 136
Amendment No. if Applicable

Subject

Midwestern Disaster Area Bonds

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

Although the rules will newly result in review of documentation relating to designating applicants as eligible for Midwestern Disaster Area Bonds, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

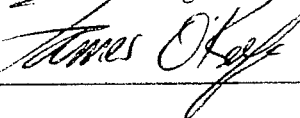
The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax-exempt private activity bonds for the recovery and rebuilding of areas which were declared major disaster areas in 2008.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

10/26/09

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 136

Amendment No.

Subject
 Midwestern Disaster Area Bonds

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known.

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	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James E. Keefe

Date

10/26/09

The Wisconsin Department of Commerce adopts an order to create chapter Comm 136 relating to allocation of the Midwestern disaster area bonding authority provided to Wisconsin under the federal Heartland Disaster Tax Relief Act of 2008, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.03.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.03.

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.03 of the Statutes authorizes and directs the Department to assist in implementing economic and community development programs, and to perform such other functions as the Governor may direct for aiding industrial development.

4. Related Statute or Rule.

Chapter Comm 113 contains rules relating to allocating a volume cap on tax-exempt private activity bonds for housing, pursuant to 26 USC 146.

5. Plain Language Analysis.

The rules in this order establish a procedure by which the Governor can designate tax-exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

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

In the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), subtitle A of title VII is the Heartland Disaster Tax Relief Act of 2008 (HDTRA). HDTRA modified section 1400N(a) of the Internal Revenue Code of 1986 to establish tax-exempt Qualified Midwestern Disaster Area (MDA) bonds for areas that in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding. HDTRA limits the aggregate face amount of bonds that may be designated as MDA bonds. HDTRA also delegates to the Governor the power to make certain designations in connection with the issuance of MDA bonds, including designation of the bonds as MDA bonds and designation of a trade or business as replacing another trade or business for these purposes.

7. Comparison With Rules in Adjacent States.

Although each of the adjacent states are listed in HDTRA as having areas eligible for MDA bonds, an Internet-based search produced corresponding administrative rules only in Iowa. Those rules and related information, by the Iowa Finance Authority, are available at http://www.iowafinanceauthority.gov/en/economic_development/midwestern_disaster_area_bonds/.

Highlights of the Iowa rules include the following:

- Through December 2009, \$2,000,000,000 of Iowa's allocation of MDA bonds will be apportioned based on the amount of damage suffered by each county, and based on FEMA allocations of housing assistance. The remaining \$615,995,000 of Iowa's allocation will be available to all eligible projects. After December 2009, any remaining MDA bonds will be available to all eligible projects. MDA bonds will be allocated on a first-come, first-served basis. Applications are received on a continuous basis.
- An application must be completed and submitted to the Governor's designee by the borrower, or an agent acting on behalf of the borrower. Applications may be submitted at any time after an inducement resolution for the project has been adopted. A fee of two basis points (.02%) of the amount of MDA bonds for which an application is made must be paid by the applicant upon filing the application.
- A Certification of Allocation is sent to the applicant when an allocation is made. Allocations are valid for 150 days. After the bonds are issued, a representative of the borrower must complete and return a Notice of Issuance and Delivery of Bonds within 10 days of the delivery date for the bonds.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of reviewing the criteria in HDTRA and in Executive Order #288 as issued by Governor Jim Doyle.

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

The primary documents that were used to determine the effect of the rules on small business were HDTRA and Executive Order #288.

No economic impact report was prepared.

10. Effect on Small Business.

The rules are expected to result in only beneficial effects on small business because the rules only address tax-exempt private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail Steven.Sabatke@Wisconsin.gov.

File reference: Comm 136/rules, analysis-e

SECTION 1. Chapter Comm 136 is created to read:

CHAPTER Comm 136, MIDWESTERN DISASTER AREA BONDS

Comm 136.01 Purpose. The purposes of this chapter are as follows:

(1) To establish a procedure for the designation by the governor of bonds issued by, or on behalf of, the state of Wisconsin, or any political subdivision thereof, as qualified Midwestern disaster area bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(2) To implement allocation of the qualified Midwestern disaster area bonding authority provided to Wisconsin under the Act specified in sub. (1), for eligible projects in affected counties, with a basis of providing assistance to areas in the order in which such assistance is most needed.

Comm 136.02 Definitions. In this chapter:

(1) "Affected county" means any of the following counties in Wisconsin: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

(2) "Department" means the department of commerce.

(3) "Issuer" means any of the following:

(a) A municipality.

(b) An agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including any redevelopment authority, community development authority, housing authority or other public corporation or commission established by or on behalf of these entities.

(c) A person acting for or on behalf of the entities listed in par. (a) or (b).

(4) "Limitation on aggregate amount" means the limitation on the aggregate amount for the issuance of bonds designated as Midwestern disaster area bonds applicable to the state of Wisconsin, which is \$3,830,112,000.

(5) "Midwestern disaster area bonds" or "MDA bonds" means bonds described in, and designated for the purposes of, 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(6) "Municipality" has the meaning given in s. 67.01 (5), Stats.

(7) "Nonresidential real property project" means a project located in any of the affected counties for which private activity bonds, as defined in 26 USC 141(a), may be issued for the cost of acquisition, construction, reconstruction or renovation of nonresidential real property, including fixed improvements associated with such property.

(8) "Project" means any residential rental project, owner-occupied residence financed with a qualified mortgage issue, public utility property project, or nonresidential real property project for which exempt facility bonds may be issued under 26 USC, as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(9) "Public utility property project" means any public utility property, as defined in 26 USC 168(i)(10), located in any of the affected counties.

(10) "Qualified mortgage issue" means a qualified mortgage issue as defined in 26 USC 143(a)(2) and as modified and applied by section 702(d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, the proceeds of which are used to finance owner-occupied residences located in any of the affected counties.

(11) "Residential rental project" means a qualified residential rental project under 26 USC 142(d)(1) and 1400N(a), as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, located in any of the affected counties.

Comm 136.03 Reservation for each affected county. (1) Prior to January 1, 2011, \$50,000,000 of the limitation on aggregate amount shall be reserved and made available for designations in respect to bonds issued for projects located in each affected county, and the balance of the limitation on aggregate amount shall be available for designations without regard to the affected county in which the project to be financed is located.

(2) Commencing on January 1, 2011, the \$50,000,000 of designations reserved for each affected county under sub. (1) shall terminate, and thereafter designations may be made from the entire unused balance of the limitation on aggregate amount for bonds to finance projects located in any of the affected counties without regard to the affected county in which the project is located.

Comm 136.04 Eligible applicants. Applicants for a designation to allow the issuance of MDA bonds are eligible only if either of the following conditions is met:

(1) The person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding in 2008.

(2) The cost is or will be incurred by a person who will be designated as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss as specified in sub. (1).

Comm 136.05 Request, review and designation process. (1) A request for a designation under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

- (a) The name and address of the issuer.
- (b) A description of the project, including, except for bonds expected to qualify as a qualified mortgage issue, the name and address of the owner, operator or sponsor of the project.
- (c) The location of the project in one or more of the affected counties.
- (d) Evidence that official action has been taken by the issuer with respect to the issuance of the bonds which, for bonds issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the bonds.
- (e) A certification of the applicant to the effect that a preliminary determination has been made by bond counsel that the obligations would constitute private activity bonds under federal tax law and that the bonds are expected to qualify as one or more of the following:
 - 1. Bonds for a nonresidential real property project.
 - 2. Bonds for a public utility property project.
 - 3. Bonds for a residential rental project.
 - 4. A qualified mortgage issue.
- (f) The requested amount of the designation.
- (g) Evidence of compliance with s. Comm 136.04.
- (h) A nonrefundable payment of \$300 by cash or by a certified or cashiers check payable to the department.

Note: The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707.

(2) An application may be made only within 150 days prior to the planned issuance of the MDA bonds.

(3) Upon receipt of a completed application, the department shall evaluate whether it meets the requirements of sub. (1).

(4) The department shall forward a request for a designation to the governor, in the order in which qualifying requests are received, if the department determines all of the following:

- (a) The application meets the requirements of sub. (1).

(b) A designation in the requested amount would not cause the aggregate amount of bonds designated under this chapter to exceed \$3,830,112,000 and would be in compliance with s. Comm 136.03.

Note: The \$3,830,112,000 limitation on aggregate amount is established under 26 USC 1400N(a), as modified and applied by section 702(d) (1) (E) (i) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

Comm 136.06 Emergency. Based upon the extensive damage to property in the affected counties that resulted from severe storms, tornados or flooding in 2008 and the resulting substantial adverse economic impact to the affected counties caused thereby, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

Comm 136.07 Post-designation process. (1) After the governor makes a designation, the department shall record that the corresponding portion of the limitation on aggregate amount has been designated.

(2) (a) Each issuer shall notify the department in writing as to the amount of MDA bonds issued pursuant to the designation from the limitation on aggregate amount, within 15 business days after the issuance of the bonds.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount issued in the bonds, up to a maximum of \$10,000, by cash or by a certified or cashiers check payable to the department.

2. The payment in subd. 1. may be reduced by the amount paid to the department under s. Comm 136.05 (1) (h).

(3) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a designation under this chapter. Upon receipt of such notice, the department shall record the surrender.

(4) All MDA bonds shall be issued before January 1, 2013.

(END)

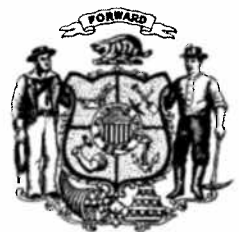
EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 136/rules 2009d,ac



WISCONSIN STATE LEGISLATURE





P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD: Contact Through Relay

Jim Doyle, Governor
Aaron Olver, Deputy Secretary

April 14, 2010

Senator Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, Capitol
Madison, WI 53707

Representative Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North, Capitol
Madison, WI 53707

Dear Senator Holperin and Representative Zepnick:

In conjunction with Executive Order #288, this Department adopted an emergency rule in 2009 relating to Midwestern disaster area bonds. The emergency rule took effect as chapter Comm 136 on November 9, 2009, and is currently in effect. The emergency rule will expire on June 6, 2010, unless an extension is granted by the Joint Committee for Review of Administrative Rules.

In conjunction with adopting the emergency rule and pursuant to chapter 227 of the Statutes, the Department filed a proposed permanent rule with the Wisconsin Legislative Council (Clearinghouse Rule Number 09-121) to replace the emergency rule. We held a hearing on that rule and the emergency rule on January 25, 2010, and then filed the permanent rule with the Legislature on March 25, 2010.

Due to the time factors associated with the rulemaking process in chapter 227 of the Statutes, the permanent rule cannot be adopted and become effective prior to the expiration of the emergency rule. In addition, the Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under section 227.24 (2) of the Statutes, in order to provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please do not hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed for your reference.

Sincerely,

A handwritten signature in black ink that reads "Aaron Olver". The signature is written in a cursive style.

Aaron Olver
Deputy Secretary
Enc.

**ORDER OF THE
DEPARTMENT OF COMMERCE**

EMERGENCY RULE RELATING TO MIDWESTERN DISASTER AREA BONDS

Finding of Emergency and Rule Analysis

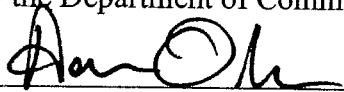
The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 3 day
of NOVEMBER, A.D. 2009,
by the Department of Commerce


for Richard J. Leinenkugel, Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 136
Amendment No. if Applicable

Subject

Midwestern Disaster Area Bonds

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

- 3. Increase Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

- 2. Decrease Costs
 - Permissive Mandatory

- 4. Decrease Revenues
 - Permissive Mandatory

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Although the rules will newly result in review of documentation relating to designating applicants as eligible for Midwestern Disaster Area Bonds, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

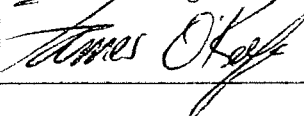
The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax-exempt private activity bonds for the recovery and rebuilding of areas which were declared major disaster areas in 2008.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

10/26/09

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 136

Amendment No.

Subject

Midwestern Disaster Area Bonds

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None known.

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	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James E. Keefe

Date

10/26/09

The Wisconsin Department of Commerce adopts an order to create chapter Comm 136 relating to allocation of the Midwestern disaster area bonding authority provided to Wisconsin under the federal Heartland Disaster Tax Relief Act of 2008, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.03.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.03.

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.03 of the Statutes authorizes and directs the Department to assist in implementing economic and community development programs, and to perform such other functions as the Governor may direct for aiding industrial development.

4. Related Statute or Rule.

Chapter Comm 113 contains rules relating to allocating a volume cap on tax-exempt private activity bonds for housing, pursuant to 26 USC 146.

5. Plain Language Analysis.

The rules in this order establish a procedure by which the Governor can designate tax-exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

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

In the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), subtitle A of title VII is the Heartland Disaster Tax Relief Act of 2008 (HDTRA). HDTRA modified section 1400N(a) of the Internal Revenue Code of 1986 to establish tax-exempt Qualified Midwestern Disaster Area (MDA) bonds for areas that in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding. HDTRA limits the aggregate face amount of bonds that may be designated as MDA bonds. HDTRA also delegates to the Governor the power to make certain designations in connection with the issuance of MDA bonds, including designation of the bonds as MDA bonds and designation of a trade or business as replacing another trade or business for these purposes.

7. Comparison With Rules in Adjacent States.

Although each of the adjacent states are listed in HDTRA as having areas eligible for MDA bonds, an Internet-based search produced corresponding administrative rules only in Iowa. Those rules and related information, by the Iowa Finance Authority, are available at http://www.iowafinanceauthority.gov/en/economic_development/midwestern_disaster_area_bonds/.

Highlights of the Iowa rules include the following:

- Through December 2009, \$2,000,000,000 of Iowa's allocation of MDA bonds will be apportioned based on the amount of damage suffered by each county, and based on FEMA allocations of housing assistance. The remaining \$615,995,000 of Iowa's allocation will be available to all eligible projects. After December 2009, any remaining MDA bonds will be available to all eligible projects. MDA bonds will be allocated on a first-come, first-served basis. Applications are received on a continuous basis.
- An application must be completed and submitted to the Governor's designee by the borrower, or an agent acting on behalf of the borrower. Applications may be submitted at any time after an inducement resolution for the project has been adopted. A fee of two basis points (.02%) of the amount of MDA bonds for which an application is made must be paid by the applicant upon filing the application.
- A Certification of Allocation is sent to the applicant when an allocation is made. Allocations are valid for 150 days. After the bonds are issued, a representative of the borrower must complete and return a Notice of Issuance and Delivery of Bonds within 10 days of the delivery date for the bonds.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of reviewing the criteria in HDTRA and in Executive Order #288 as issued by Governor Jim Doyle.

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

The primary documents that were used to determine the effect of the rules on small business were HDTRA and Executive Order #288.

No economic impact report was prepared.

10. Effect on Small Business.

The rules are expected to result in only beneficial effects on small business because the rules only address tax-exempt private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail Steven.Sabatke@Wisconsin.gov.

File reference: Comm 136/rules, analysis-e

SECTION 1. Chapter Comm 136 is created to read:

CHAPTER Comm 136, MIDWESTERN DISASTER AREA BONDS

Comm 136.01 Purpose. The purposes of this chapter are as follows:

(1) To establish a procedure for the designation by the governor of bonds issued by, or on behalf of, the state of Wisconsin, or any political subdivision thereof, as qualified Midwestern disaster area bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(2) To implement allocation of the qualified Midwestern disaster area bonding authority provided to Wisconsin under the Act specified in sub. (1), for eligible projects in affected counties, with a basis of providing assistance to areas in the order in which such assistance is most needed.

Comm 136.02 Definitions. In this chapter:

(1) "Affected county" means any of the following counties in Wisconsin: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

(2) "Department" means the department of commerce.

(3) "Issuer" means any of the following:

(a) A municipality.

(b) An agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including any redevelopment authority, community development authority, housing authority or other public corporation or commission established by or on behalf of these entities.

(c) A person acting for or on behalf of the entities listed in par. (a) or (b).

(4) "Limitation on aggregate amount" means the limitation on the aggregate amount for the issuance of bonds designated as Midwestern disaster area bonds applicable to the state of Wisconsin, which is \$3,830,112,000.

(5) "Midwestern disaster area bonds" or "MDA bonds" means bonds described in, and designated for the purposes of, 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(6) "Municipality" has the meaning given in s. 67.01 (5), Stats.

(7) "Nonresidential real property project" means a project located in any of the affected counties for which private activity bonds, as defined in 26 USC 141(a), may be issued for the cost of acquisition, construction, reconstruction or renovation of nonresidential real property, including fixed improvements associated with such property.

(8) "Project" means any residential rental project, owner-occupied residence financed with a qualified mortgage issue, public utility property project, or nonresidential real property project for which exempt facility bonds may be issued under 26 USC, as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(9) "Public utility property project" means any public utility property, as defined in 26 USC 168(i)(10), located in any of the affected counties.

(10) "Qualified mortgage issue" means a qualified mortgage issue as defined in 26 USC 143(a)(2) and as modified and applied by section 702(d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, the proceeds of which are used to finance owner-occupied residences located in any of the affected counties.

(11) "Residential rental project" means a qualified residential rental project under 26 USC 142(d)(1) and 1400N(a), as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, located in any of the affected counties.

Comm 136.03 Reservation for each affected county. (1) Prior to January 1, 2011, \$50,000,000 of the limitation on aggregate amount shall be reserved and made available for designations in respect to bonds issued for projects located in each affected county, and the balance of the limitation on aggregate amount shall be available for designations without regard to the affected county in which the project to be financed is located.

(2) Commencing on January 1, 2011, the \$50,000,000 of designations reserved for each affected county under sub. (1) shall terminate, and thereafter designations may be made from the entire unused balance of the limitation on aggregate amount for bonds to finance projects located in any of the affected counties without regard to the affected county in which the project is located.

Comm 136.04 Eligible applicants. Applicants for a designation to allow the issuance of MDA bonds are eligible only if either of the following conditions is met:

(1) The person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding in 2008.

(2) The cost is or will be incurred by a person who will be designated as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss as specified in sub. (1).

Comm 136.05 Request, review and designation process. (1) A request for a designation under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

- (a) The name and address of the issuer.
- (b) A description of the project, including, except for bonds expected to qualify as a qualified mortgage issue, the name and address of the owner, operator or sponsor of the project.
- (c) The location of the project in one or more of the affected counties.
- (d) Evidence that official action has been taken by the issuer with respect to the issuance of the bonds which, for bonds issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the bonds.
- (e) A certification of the applicant to the effect that a preliminary determination has been made by bond counsel that the obligations would constitute private activity bonds under federal tax law and that the bonds are expected to qualify as one or more of the following:
 - 1. Bonds for a nonresidential real property project.
 - 2. Bonds for a public utility property project.
 - 3. Bonds for a residential rental project.
 - 4. A qualified mortgage issue.
- (f) The requested amount of the designation.
- (g) Evidence of compliance with s. Comm 136.04.
- (h) A nonrefundable payment of \$300 by cash or by a certified or cashiers check payable to the department.

Note: The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707.

(2) An application may be made only within 150 days prior to the planned issuance of the MDA bonds.

(3) Upon receipt of a completed application, the department shall evaluate whether it meets the requirements of sub. (1).

(4) The department shall forward a request for a designation to the governor, in the order in which qualifying requests are received, if the department determines all of the following:

- (a) The application meets the requirements of sub. (1).

(b) A designation in the requested amount would not cause the aggregate amount of bonds designated under this chapter to exceed \$3,830,112,000 and would be in compliance with s. Comm 136.03.

Note: The \$3,830,112,000 limitation on aggregate amount is established under 26 USC 1400N(a), as modified and applied by section 702(d) (1) (E) (i) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

Comm 136.06 Emergency. Based upon the extensive damage to property in the affected counties that resulted from severe storms, tornados or flooding in 2008 and the resulting substantial adverse economic impact to the affected counties caused thereby, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

Comm 136.07 Post-designation process. (1) After the governor makes a designation, the department shall record that the corresponding portion of the limitation on aggregate amount has been designated.

(2) (a) Each issuer shall notify the department in writing as to the amount of MDA bonds issued pursuant to the designation from the limitation on aggregate amount, within 15 business days after the issuance of the bonds.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount issued in the bonds, up to a maximum of \$10,000, by cash or by a certified or cashiers check payable to the department.

2. The payment in subd. 1. may be reduced by the amount paid to the department under s. Comm 136.05 (1) (h).

(3) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a designation under this chapter. Upon receipt of such notice, the department shall record the surrender.

(4) All MDA bonds shall be issued before January 1, 2013.

(END)

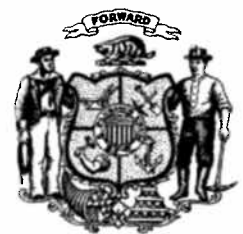
EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 136/rules 2009d,ac



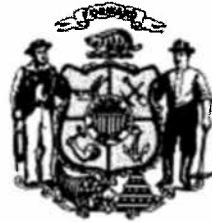
WISCONSIN STATE LEGISLATURE



SENATOR JIM HOLPERIN
CO-CHAIR

PO Box 7882
MADISON, WI 53707-7882

(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

PO BOX 8953
MADISON, WI 53707-8953

(608) 266-1707

Friday, May 28, 2010

Aaron Olver, Secretary
Wisconsin Department of Commerce
P.O. Box 7970
Madison, WI 53707

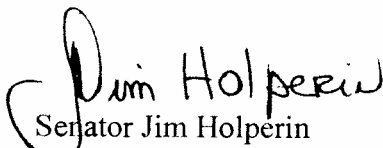
Dear Secretary Olver:

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 25, 2010 and adopted the following motion:

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Commerce, relating to Midwestern disaster area bonds (EmR0931), for a period of 60 days through August 5, 2010.

Motion Passed 10-0.

Sincerely

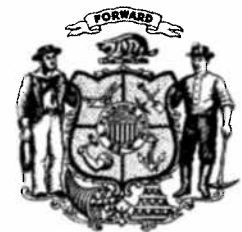

Senator Jim Holperin
Senate Co-Chair

Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council



WISCONSIN STATE LEGISLATURE





P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD: Contact Through Relay
Jim Doyle, Governor
Aaron Olver, Secretary

August 20, 2010

Senator Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, Capitol
Madison, WI 53707

Representative Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North, Capitol
Madison, WI 53707

Dear Senator Holperin and Representative Zepnick:

As authorized by SECTION 9110 (16u) of 2009 Wisconsin Act 28, this Department adopted an emergency rule earlier this year relating to the small business innovation and research assistance grants established under subchapter III of chapter 560 of the Statutes, as likewise enacted in Act 28. The emergency rule took effect on April 21, 2010, and is currently in effect. The emergency rule will expire on September 18, 2010, unless an extension is granted by the Joint Committee for Review of Administrative Rules.

In conjunction with adopting the emergency rule and pursuant to chapter 227 of the Statutes, the Department filed a proposed permanent rule with the Wisconsin Legislative Council (Clearinghouse Rule Number 10-054) to replace the emergency rule. We held a hearing on that rule and the emergency rule on June 10, 2010, and filed the permanent rule with the Legislature on July 15th.

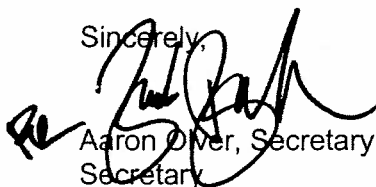
Due to the time factors associated with the rulemaking process in chapter 227 of the Statutes, the permanent rule cannot be adopted and become effective prior to the expiration of the emergency rule. In addition, the Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under section 227.24 (2) of the Statutes, in order to provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please do not hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed for your reference.

Sincerely,


Aaron Olver, Secretary
Secretary
Enc.

File ref: JCRAR extension request

**ORDER OF THE
DEPARTMENT OF COMMERCE**

**EMERGENCY RULE RELATING TO SMALL BUSINESS INNOVATION
AND RESEARCH ASSISTANCE GRANTS**

Exemption From Finding of Emergency

The Legislature, by SECTION 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 14 day
of April, A.D. 2010,
by the Department of Commerce



Aaron Olver, Deputy Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 121
Amendment No. if Applicable

Subject

Small Business Innovation and Research Assistance Grants

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 Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- 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

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate


Although the rules will newly result in review of documentation relating to applications for grants under this chapter, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation only by entities that choose to pursue obtaining grants under this chapter.

Long-Range Fiscal Implications
None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

4/13/10

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 121

Amendment No.

Subject

Small Business Innovation and Research Assistance Grants

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known.

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	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

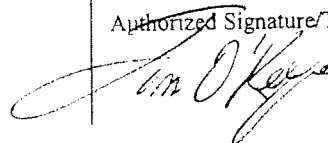
NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

4/13/10

The Wisconsin Department of Commerce adopts an order to create chapter Comm 121 relating to the small business innovation research assistance program, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.45.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.45 (3).

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.45 (3) of the Statutes requires the Department to promulgate rules for administering the small business innovation and research assistance grants established under subchapter III of chapter 560 of the Statutes.

4. Related Statute or Rule.

The Department has various rules for administering several economic development programs, including criteria in chapter Comm 129 for grants or loans to fund professional services related to completing an application to be submitted to the federal government for obtaining early stage research and development funding.

5. Plain Language Analysis.

These rules set forth the criteria the Department or its designee will use to administer the small business innovation and research assistance grants established under subchapter III of chapter 560 of the Statutes, as enacted in 2009 Wisconsin Act 28. These grants will assist businesses in the phase of development that precedes the eligibility of the businesses in the federal Small Business Innovation Research (SBIR) program, or businesses which are participating in the Phase III, commercialization portion of that program.

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

The U.S. Small Business Administration (SBA) Office of Technology administers the federal SBIR program. Federal agencies with extramural research and development budgets over \$100 million are required to administer SBIR programs using an annual set-aside of 2.5% for small companies to conduct innovative research or research and development that has potential for commercialization and public benefit. Through this competitive program, SBA ensures that the nation's small, high-tech, innovative businesses are a significant part of the federal government's research and development efforts. Eleven federal departments participate in the SBIR program.

As of May 2007, over \$12 billion had been awarded to various small businesses, and the current annual allocation, in combination with the parallel Small Business Technology Transfer program, is over \$2 billion. The Department is not aware of any federal grants that provide funding for assistance with submitting applications or otherwise participating in the SBIR program.

7. Comparison With Rules in Adjacent States.

None of the adjacent States were found to have rules that are likewise primarily directed at providing grants to assist businesses with (1) establishing eligibility for or preparing applications for federal SBIR funding or (2) commercializing products developed through SBIR funding. However, Illinois provides grant-writing and consultant services for assistance in identifying, preparing, advancing and reviewing SBIR proposals – and Minnesota provides matching dollars to support commercialization of SBIR projects.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) applying the corresponding provisions in section 560.45 of the Statutes; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

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

The primary documentation was used to determine the effect of the rules on small business was section 560.45 of the Statutes. The proposed rules and this section of the Statutes apply their private-sector requirements only to entities that choose to pursue a corresponding grant. No economic impact report was prepared.

10. Effect on Small Business.

The rules are expected to result in only beneficial effects on small business because the rules only address grants that will assist businesses in the phase of development which precedes the eligibility of the businesses in the federal SBIR program, or businesses that are participating in Phase III of that program.

11. Agency Contact Person.

Shelly Harkins, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 266-0346; e-mail Shelly.Harkins@wi.gov.

File reference: Comm 121rules, analysis-e

SECTION 1. Chapter Comm 121 is created to read:

CHAPTER Comm 121, SMALL BUSINESS INNOVATION RESEARCH ASSISTANCE PROGRAM

Comm 121.01 Purpose and authority. (1) PURPOSE. The purpose of this chapter is to set forth the criteria the department or its designee will use to administer the small business innovation research assistance program established under subch. III of ch. 560, Stats.

(2) AUTHORITY. This chapter is promulgated under the authority in s. 560.45 (3), Stats.

Note: Section 560.45 (2) of the Statutes limits the Department to awarding no more than \$250,000 in grants under this chapter in each fiscal year.

Comm 121.02 Definitions. In this chapter, "Department" means the department of commerce.

Comm 121.03 Early stage technical assistance grants. (1) An eligible applicant under this section is an individual who is starting, developing or operating a Wisconsin business that is in the early stage research and development phase preceding eligibility for grants under the federal small business innovation research program.

(2) Eligible activities are the professional services provided by an independent third party that are necessary for the applicant to become eligible for the federal small business innovation research program and may include any of the following:

- (a) Business planning.
- (b) Accounting and financial organization.
- (c) Grant writing assistance.
- (d) Market development.
- (e) Intellectual property costs.

(3) Annually the department or its designee shall allocate up to \$100,000 for grants under this section.

(4) A grant to an applicant under this section may not exceed \$15,000.

Comm 121.04 Technical assistance grants for small business innovation research.

(1) An eligible applicant under this section is an individual who is starting, developing or operating a Wisconsin business and who is preparing an application for participation in the federal small business innovation research program.

(2) Eligible activities are the professional services provided by an independent third party that are necessary to prepare an application for participation in the federal small business innovation research program.

(3) Annually the department or its designee shall allocate up to \$50,000 for grants under this section.

(4) A grant to an applicant under this section may not exceed \$15,000.

Comm 121.05 Commercialization grants. (1) An eligible applicant under this section is a Wisconsin business that has received prior federal small business innovation research funding and is in the commercialization phase of this activity.

(2) Eligible activities are those that are necessary to participate in phase III of the federal small business innovation research program, and include work that derives from, extends, or logically concludes efforts performed under prior federal funding from that program.

(3) Annually the department or its designee shall allocate up to \$100,000 for grants under this section.

Comm 121.06 Match requirement. A minimum of 25% of eligible project costs shall be paid in cash and shall be from sources other than the state.

Comm 121.07 Criteria. The department or its designee shall consider the following when making an award under this chapter:

- (1) The amount of economic impact the applicant, if successful, will have in this state.
- (2) The quality of the professional service provider assisting the applicant.
- (3) The level of need demonstrated by the applicant.
- (4) Whether the applicant has or will have a business location in this state.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants; (2) submittal of statements for such grants; and (3) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

(END)

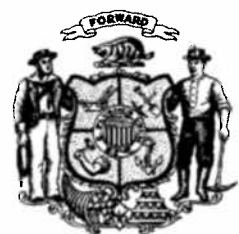
EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 121/rules e



WISCONSIN STATE LEGISLATURE





P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD: Contact Through Relay

Jim Doyle, Governor
Aaron Oliver, Secretary

September 17, 2010

← Senator Jim Holperin, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, Capitol
Madison, WI 53707

Representative Josh Zepnick, Co-Chair
Joint Committee for Review of Administrative Rules
Room 219 North, Capitol
Madison, WI 53707

Dear Senator Holperin and Representative Zepnick:

On June 2, 2010, this Department adopted an emergency rule for implementing the food processing plant and food warehouse investment tax-credit program mandated by section 560.2056 (4) of the Statutes, as created in 2009 Wisconsin Act 295. The rule was adopted as an emergency rule in order to execute the tax-credit allocations that would otherwise expire before corresponding permanent rules can become effective.

The emergency rule took effect on June 8, 2010, and is currently in effect. The emergency rule will expire on November 4, 2010, unless an extension is granted by the Joint Committee for Review of Administrative Rules.

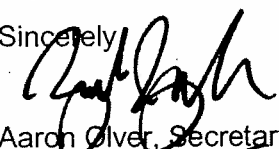
In conjunction with adopting the emergency rule and pursuant to chapter 227 of the Statutes, the Department is developing a proposed permanent rule for replacing the emergency rule. Due to the time factors associated with the rulemaking process in chapter 227 of the Statutes, the permanent rule cannot be adopted and become effective prior to the expiration of the emergency rule. In addition, the Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under section 227.24 (2) of the Statutes, in order to provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please do not hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed for your reference.

Sincerely,


Aaron Oliver, Secretary
Secretary
Enc.

File ref: Comm 135/JCRAR extension request

**ORDER OF THE
DEPARTMENT OF COMMERCE**

EMERGENCY RULE RELATING TO TAX CREDITS FOR INVESTMENTS IN FOOD
PROCESSING PLANTS AND FOOD WAREHOUSES

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, as created in 2009 Wisconsin Act 295, a taxpayer may claim a tax credit for investments in food processing plants and food warehouses during taxable years beginning after December 31, 2009.

Section 560.2056 (4) of the Statutes, as likewise created in 2009 Wisconsin Act 295, requires the Department to (1) implement a program for certifying taxpayers as eligible for the food processing plant and food warehouse investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax-credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

Although the Department of Commerce has begun promulgating the permanent rule that is required by 2009 Act 295, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to accommodate allocating the tax credits for the 2009-10 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that will be eligible for the allocation that expires on June 30, 2010.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Dated at Madison this 2 day
Of June, A.D. 2010,
by the Department of Commerce



Aaron Olver, Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 135
Amendment No. if Applicable

Subject
Food Processing Plant and Food Warehouse Investment Credit

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 Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

- 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

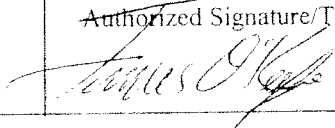
Although the rules will newly result in review of documentation relating to certifying applicants as eligible to then claim allocated tax credits for investments in food processing plants and food warehouses, the number of these reviews and allocations is expected to be too small to result in significant changes in the Department's costs for administering its business development programs. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules address only voluntary submittal of documentation relating to tax credits for investments in food processing plants and food warehouses.

Long-Range Fiscal Implications
None known.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

6/2/10

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect
DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
Chapter Comm 135

Subject
Food Processing Plant and Food Warehouse Investment Credit

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None known.

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	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James O'Keefe

Date

6/2/10

The Wisconsin Department of Commerce adopts an order to create chapter Comm 135 relating to investment tax credits for food processing plants and food warehouses, and affecting small businesses.

Analysis of Rules

1. Statutes Interpreted.

Sections 71.07 (3rm), 71.28 (3rm), 71.47 (3rm), and 560.2056 (4) – as created in 2009 Wisconsin Act 295.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.2056 (4).

3. Explanation of Agency Authority.

Section 560.2056 (4) of the Statutes requires the Department to promulgate rules for implementing and administering a program to certify applicants and allocate tax credits for the food processing plant and food warehouse investments addressed in sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

4. Related Statute or Rule.

The Department has rules for several other programs associated with tax credits, but those programs are not targeted specifically to investments in food processing plants and food warehouses.

5. Summary of Rule.

The rules in this order address (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the food processing plant and food warehouse investment credit, and to receive acceptance of incurred expenses; (3) the Department’s response to the submitted documentation; and (4) filing a claim with the Department of Revenue for the corresponding tax credit.

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

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulations that address this tax credit.

7. Comparison With Rules in Adjacent States.

Minnesota, Illinois and Iowa have various tax-credit programs but nothing similar to the food processing plant and food warehouse investment credit addressed in these rules. Michigan

has an Agricultural Processing Renaissance Zone program that offers abatement of certain taxes to agricultural processing facilities.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2009 Wisconsin Act 295; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue; and (4) reviewing Internet-based sources of related federal, state and private-sector information.

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

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 295. This Act requires the Department to implement a program to certify taxpayers as eligible for the food processing plant and food warehouse investment credit under sections 71.07 (3m), 71.28 (3m) and 71.47 (3m) of the Statutes, and requires the Department to promulgate rules for administering the program. This Act applies its private-sector requirements only to food processing plants and food warehouses for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by applicants that choose to pursue tax credits for modernization or expansion of food processing plants and food warehouses.

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail Steven.Sabatke@Wisconsin.gov

File reference: Comm 135/rules, analysis-e

SECTION 1. Chapter Comm 135 is created to read:

Chapter Comm 135

FOOD PROCESSING PLANT AND FOOD WAREHOUSE INVESTMENT CREDIT

Comm 135.10 Authority and purpose. Pursuant to s. 560.2056 (4), Stats., this chapter sets forth the requirements for obtaining all of the following from the department:

(1) A certification that a taxpayer, including a taxpayer who is any of the following, is eligible for the food processing plant and food warehouse investment credit under s. 71.07 (3rm), 71.28 (3rm), or 71.47 (3rm), Stats.:

- (a) A partner of a partnership.
- (b) A member of a limited liability company.
- (c) A shareholder of a tax-option corporation.

(2) A determination of the maximum amount of tax credit that may be claimed under this chapter for an investment in a food processing plant or food warehouse.

Note: The statute sections listed in this section address income and franchise tax credits for investments in food processing plants and food warehouses.

Comm 135.20 Definitions. In this chapter:

(1) "Department" means the department of commerce.

(2) "Eligible capital investment" includes all expenses incurred in the acquisition, construction or improvement of buildings or facilities; and the purchase price of depreciable personal property or equipment.

(3) "Food" has the meaning given in s. 97.01 (6), Stats.

Note: Section 97.01 (6) of the Statutes reads as follows: " 'Food' means: (a) Articles used for food or drink by persons.

(b) Chewing gum.

(c) Articles used for components of matters specified in pars. (a) and (b)."

(4) "Food processing" has the meaning given in s. 97.29 (1) (g) (intro.) to 3., Stats.

Note: Section 97.29 (1) (g) (intro.) to 3. of the Statutes reads as follows: " 'Food processing' means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging, or through any other treatment or preservation process. 'Food processing' includes the activities of a bakery, confectionary or bottling establishment, and also includes the receipt and salvaging of distressed food for sale or use as food. 'Food processing' does not include any of the following:

- 1. Activities covered under a dairy plant license issued under s. 97.20.

2. Activities covered under a meat or poultry establishment license issued under s. 97.42.
3. The retail preparation and processing of meals for sale directly to consumers or through vending machines if the preparation and processing is covered under a restaurant permit or other permit issued under s. 254.64.

(5) "Food processing plant" has the meaning given in s. 71.07 (3rm) (a) 2., Stats.

Note: Under section 71.07 (3rm) (a) 2. of the Statutes, "Food processing plant" means any place where food processing is conducted, except that it does not include (1) any establishment subject to the requirements of section 97.30 of the Statutes; (2) any restaurant or other establishment holding a permit under section 254.64 of the Statutes, to the extent that the activities of that establishment are covered by section 97.30 of the Statutes or the permit under section 254.64 of the Statutes; (3) dairy plants licensed under section 97.20 of the Statutes; or (4) meat establishments licensed under section 97.42 of the Statutes.

(6) "Food warehouse" has the meaning given in s. 71.07 (3rm) (a) 3., Stats.

Note: Under section 71.07 (3rm) (a) 3. of the Statutes, "Food warehouse" means a warehouse used for the storage of food, and includes a cold-storage warehouse, frozen-food warehouse and frozen-food locker plant. "Food warehouse" does not include (1) a warehouse used solely for the storage of grain or other raw agricultural commodities; (2) a retail food establishment, restaurant or other retail facility at which food is stored on a temporary basis incidental to retail preparation or sale; (3) A warehouse located in a dairy plant licensed under section 97.20 of the Statutes, a food processing plant licensed under section 97.29 of the Statutes, or a meat establishment licensed under section 97.42 of the Statutes, and used primarily for the storage of food ingredients or food products manufactured or processed at the licensed establishment; (4) a warehouse operated by a milk distributor licensed under section 97.21 (3) of the Statutes and used primarily for the storage and distribution of milk and fluid milk products, as defined in section 97.20 (1) (c) and (g) of the Statutes; and (5) a facility owned or operated by a consumer and used by that consumer to store food for the consumer's use.

Comm 135.30 Applying for certification and allocation. (1) (a) A taxpayer or one of the following entities may apply for a certification and an allocation for a food processing plant or food warehouse investment credit:

1. A partnership.
2. A limited liability company.
3. A tax-option corporation.

(b) A "taxpayer" or the "entities" in par. (a) may include either the operator of a food processing plant or food warehouse, or an owner of a building or facility in which a food processing plant or food warehouse is located.

(2) Application to the department for a certification and an allocation of the credit shall be made on a valid, department-prescribed form.

Note: The application form that is currently valid can be obtained from the Department at P.O. Box 7970, Madison, WI, 53707, or at www.commerce.wi.us.

(3) (a) Each application shall include all of the following information:

1. A description of the business operations of the applicant, in relation to the project.

2. A description of the project, including the eligible capital investment.
3. A description of how the project will promote economic development.
4. Any other information that the department deems necessary to evaluate applications and allocate available tax credits.
5. Any subsequent clarification requested by the department.

(b) No application may include costs incurred in taxable years beginning on or after January 1, 2017.

(4) Each application shall be completed and either postmarked or delivered to the department no sooner than upon completion of the taxable year in which the costs listed in the application were incurred and no later than February 15th of the subsequent taxable year, unless this deadline is extended by the department, except as specified in sub. (5).

(5) For tax credits that may be allocated in fiscal year 2009-10 under s. 71.07 (3rm) (c) 3. a., 71.28 (3rm) (c) 3. a., and 71.47 (3rm) (c) 3. a., Stats, each application shall be completed and either postmarked or delivered to the department no later than June 18, 2010.

Comm 135.40 Certifications for applicants, and allocation of tax credits. (1) After receipt of the applications submitted under s. Comm 135.30, the department shall issue certifications for the applicants that have met the criteria in s. Comm 135.30 (2) to (5).

(2) (a) In conjunction with issuing a certification for an applicant, the department shall determine the maximum amount of tax credit that the applicant may either claim or distribute to its partners, members or shareholders, except as specified in par. (b).

(b) In conjunction with issuing a certification for an applicant who submits an application under s. Comm 135.30 (5), the department shall determine the maximum amount of tax credit that the applicant may either claim or distribute to its partners, members or shareholders, based on eligible capital investments made by the applicant from January 1, 2010, to May 31, 2010.

Note: Under chapter 71, of the Statutes., the aggregate amount of credits that a taxpayer may claim under this chapter is \$200,000; except that partnerships, limited liability companies, tax-option corporations and other multiple-owner entities are limited to an aggregate of \$200,000 for an entity.

(3) (a) Due to the \$1,000,000; \$1,200,000 and \$700,000 maximum totals established in s. 71.07 (3rm) (c) 3., Stats., for allocations in fiscal years 2009-10, 2010-11 and thereafter, respectively, the department may allocate the tax credits in a manner that the department believes is most likely to promote economic development.

(b) In determining the allocation of tax credits under par. (a), the department shall consider all of the following:

1. The jobs created by the project.
2. The salaries, wages and other employee benefits of the jobs created by the project.
3. The impact of the project on the food processing and food warehouse industries in Wisconsin.
4. The extent to which the area served by the project is economically distressed.
5. The amount of new, eligible capital investment in the project.
6. The impact of the project on business in Wisconsin.
7. Any previous assistance from the department.

(c) The department may prorate some or all of the allocations in order to broaden the potential for promoting economic development and to address the criteria in par. (b).

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development tax credits and (2) penalties for submitting false or misleading information.

Comm 135.50 Notifications. Following completion of the certifications and allocations in s. Comm 135.40, the department shall notify each applicant of the outcome of their application – and shall notify the department of revenue of every certification issued under this chapter and the amount of the tax credit allocated to the applicant.

Comm 135.60 Claims. A taxpayer may file for a tax credit under this chapter using forms acceptable to the department of revenue.

(END)

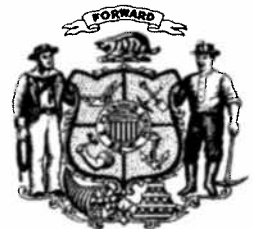
EFFECTIVE DATE

Pursuant to s. 227.2 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.

File reference: Comm 135/rules e2



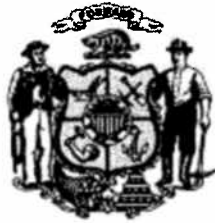
WISCONSIN STATE LEGISLATURE



SENATOR JIM HOLPERIN
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REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

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Wednesday, October 20, 2010

Aaron Olver, Secretary
Wisconsin Department of Commerce
P.O. Box 7970
Madison, WI 53707

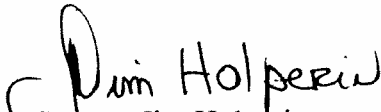
Dear Secretary Olver:

The Joint Committee for the Review of Administrative Rules met in Executive Session on October 20, 2010 and adopted the following motion:

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Commerce, relating to tax credits for investments in food processing plants and food warehouses (EmR1019), for a period of 60 days through January 3, 2011.

Motion Passed 10-0.

Sincerely,


Senator Jim Holperin
Senate Co-Chair


Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council