

09hr_JCR-AR_Misc_pt35



Details: Emergency Rules 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**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

DEPARTMENT OF COMMERCE

EMERGENCY RULE
RELATING TO
SAFE INSTALLATION AND OPERATION OF
CONVEYANCES (ELEVATORS, ESCALATORS AND LIFT DEVICES)

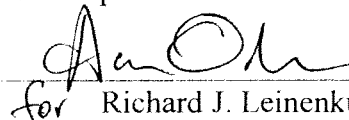
Finding of Emergency Rule

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. The recent revision of chapter Comm 18, Elevators, Escalators and Lift Devices, references and adopts the 2007 edition of the national standard ASME A17.1, developed by the American Society of Mechanical Engineers. Effective January 1, 2009, the regulations include a provision, s. Comm 18.1702 (8), that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes.
2. The department included the wear and fatigue monitoring system and protection device requirements in anticipation that the next edition of the national ASME A17.1 standard would incorporate a similar provision. The department developed s. Comm 18.1702 (8) based on code language being proposed by the national standard ASME A17.1 Committee.
3. The wear and fatigue monitoring system and the device to protect against suspension loss were not incorporated into the next version of the ASME A17.1. The ASME A17.1 Committee withdrew the section because of implementation concerns, and at this time it is unclear what the final section on suspension ropes and their connections in elevators will include.
4. Because the department adopts by reference the national standard ASME A17.1, it recognizes that without promulgating this emergency rule, there could be confusion in what constitutes recognized safe practices for a monitoring system and protection against suspension loss for electric traction elevators. The department believes that repealing s. Comm 18.1702 (8) will keep the Wisconsin code in alignment with the most current edition of ASME A17.1 and still promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper.

Dated at Madison this 29th
day of JANUARY, 2009,
by the Department of Commerce.


for Richard J. Leinenkugel, Secretary

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

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Comm 18.1702 (8)

Amendment No.

Subject
 Suspension Ropes and Their Connections Serving Elevators

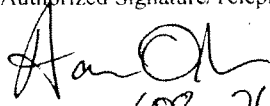
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

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	\$ -
(FTE Position Changes)	(0 FTE)	(- FTE)
State Operations - Other Costs	0	-
Local Assistance	0	-
Aids to Individuals or Organizations	0	-
TOTAL State Costs By Category	\$	\$ -
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
TOTAL State Revenues	\$ 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/Larry Swaziek, 267-7701

Authorized Signature/Telephone No.

 608-266-8976

Date
 1-29-07

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Comm 18.1702

Amendment No. if Applicable

Subject

Suspension Ropes and Their Connections Serving Elevators

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

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

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

The emergency rule repeals code language requiring a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes. Repealing s. Comm 18.1702 (8) will not affect department revenue or expenditures.

Long-Range Fiscal Implications

No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/Larry Swaziek, 267-7701

Authorized Signature/Telephone No.
AmOR
6-8976

Date
1-29-09

The Wisconsin Department of Commerce adopts an order to repeal s. Comm 18.1702 (8) relating to a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators that use smaller sized wire ropes.

Analysis of Rule

1. Statutes Interpreted

Sections 101.02 (15) (h) to (j), 101.17, 101.63 (1), and 101.981 to 101.985, and 101.988, Stats.

2. Statutory Authority

Sections 101.02 (15) (h) to (j), 101.17, 101.63 (1), and 101.981 to 101.985 and 101.988, Stats.

3. Related Statute or Rule

Chapters Comm 60 to 66, Wisconsin Commercial Building Code
Chapters Comm 20 to 25, Wisconsin Uniform Dwelling Code

4. Explanation of Agency Authority

Under the authority of ss. 101.17, 101.63 and 101.982, Stats., the Department has the authority to promulgate rules for the safe installation and operation of conveyances (elevators, escalators and lift devices). Under the authority of ss. 101.17, 101.983 and 101.988, Stats., the Department has the authority to promulgate rules for required permits, inspection and enforcement of the technical standards. Currently, the Department has fulfilled this responsibility by promulgating the Elevators, Escalators and Lift Devices Code, chapter Comm 18.

5. Summary of Proposed Rule

The emergency rule repeals a provision that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes. The repeal is necessary because the American Society of Mechanical Engineers (ASME) did not incorporate a similar provision into the latest edition of its national A17.1 standard that is adopted by reference in Comm 18 which became effective January 1, 2009. Nationally, conveyance equipment is designed and manufactured to meet the ASME A17.1 standard.

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

An Internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to requiring a wear and fatigue monitoring system or a device that protects against suspension loss in electric traction elevators. There are no existing or proposed federal regulations that address the specific issue or impact the activities to be regulated by this rule.

7. Comparison with Rules in Adjacent States

An Internet-based search found that all of the adjacent states adopt by reference certain editions of the ASME A17.1, Safety Code for Elevators and Escalators. The adjacent states also create amendments to the adopted standard similar to Wisconsin’s administrative rules relating to elevators, escalators and lift devices.

None of the elevator or escalator regulatory programs in the states of Illinois, Iowa, Michigan or Minnesota had specific rules or standards regarding the wear and fatigue monitoring system or the device that protects against suspension loss for electric traction elevators as addressed by the Wisconsin rule being repealed under this emergency rule.

8. Summary of Factual Data and Analytical Methodologies

The emergency rule was developed using information gathered when the department learned that the ASME A17.1 Committee was not incorporating the section relating to the wear and fatigue monitoring system and the device that protects against suspension loss for electric traction elevators into its next edition of the national A17.1, Safety Code for Elevators and Escalators. The current edition of the national standard for the design and construction of conveyance serves as the basis for the proposed rule as well as for the remainder of chapter Comm 18.

In addition, the department involved the Conveyance Safety Code Council in its review and assessment process. Council members represent many stakeholders involved in the conveyance industry, including manufacturers, inspectors, building contractors and the general public as users of the conveyances.

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

The department believes the rule will not increase the effect on small businesses from what the current rules impose on them. An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

Larry Swaziek, Program Manager, Larry.swaziek@wisconsin.gov, (608) 267-7701.

SECTION 1. Comm 18.1702 (8) is repealed.

(END)

EFFECTIVE DATE

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

(Note: Publication Date, February 5, 2009)



DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING TO
BUILDING CONTRACTORS

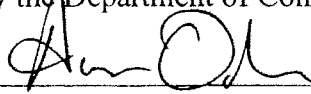
Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.
2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.
3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.
4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department's ability to communicate with and educate building contractors throughout the state about their obligations to limit safety and health risks for the citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.
5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in order for the benefits to be in effect for the 2009 building construction season.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper, except for ss. Comm 5.30 (1) and Comm 61.295 (2) which shall take effect on July 1, 2009.

Dated at Madison this 23
day of February, 2009,
by the Department of Commerce.


for Richard J. Leinenkugel, Secretary

The Wisconsin Department of Commerce adopts an order to create Comm 5.01 (4) (h), Comm 5.02 Table 5.02 line 8m., Comm 5.02 Table 5.02 footnote a, Comm 5.06 Table 5.06 line 8m., Comm 5.30 and Comm 61.295 relating to building contractors and affecting small business.

Analysis of Rule

1. Statutes Interpreted

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

2. Statutory Authority

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

3. Related Statute or Rule

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

4. Explanation of Agency Authority

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

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

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

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

5. Summary of Proposed Rules

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

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

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

7. Comparison with Rules in Adjacent States

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

Illinois:

The state of Illinois does not have any regulations regarding the licensure of building contractors, except roofers.

Iowa:

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

Michigan:

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

Minnesota:

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

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

8. Summary of Factual Data and Analytical Methodologies

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

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

The proposed rules require the registration of individuals and entities that act as building contractors or subcontractors who are involved in the construction or modification of public buildings, places of employment and one- and 2- family dwellings and who are not already credentialed by the department. The department currently credentials several contracting trades, including dwelling contractors, HVAC contractors, electrical contractors and elevator contractors. The rules would apply to those persons and entities engaged in the business of commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

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

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

10. Agency Contact.

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

11. Public Hearing Comments.

The hearing record on this emergency rule will remain open until April 10, 2009. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

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

Comm 5.01 (4) (h) Building contractor.

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

Partial Table 5.02

**Table 5.02
FEES**

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

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

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

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

Partial Table 5.06

**Table 5.06
TERMS**

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

SECTION 5. Comm 5.30 is created to read:

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

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

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

a. A dwelling contractor certification.

b. A dwelling contractor – restricted certification.

- c. A manufactured home manufacturer license.
 - d. A manufactured home dealer license.
 - e. A manufactured home installer license.
 - f. An electrical contractor certification.
 - g. An electrical contractor – restricted certification.
 - h. An HVAC contractor registration.
 - i. An elevator contractor license.
2. A person or entity that works only on real estate or property they own or lease.

(c) Under this section:

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

Note: Examples of construction businesses that are to register:

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

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

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

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

- (a) An application in accordance with s. Comm 5.01.
- (b) An application fee and a registration fee in accordance with s. Comm 5.02, Table 5.02.

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

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

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

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

(a) Include their registration number on all construction bids and contracts.

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

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

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

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

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

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

SECTION 6. Comm 61.295 is created to read:

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

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

END

EFFECTIVE DATE

Pursuant to s. 227.24, Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper, except ss. Comm 5.30 (1) and Comm 61.295 (2) which shall take effect on July 1, 2009.

(Note: Publication Date, March 2, 2009)

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Comm 5.30 Emergency Rule
Amendment No. if Applicable

Subject
Building Contractor Registration

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

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

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

The rules require a registration credential for various building contactors who are involved in the construction or modification of public buildings and places of employment and one- and 2-family dwellings, unless the contractor already holds another type of contractor credential issued by the department. The type of contracting businesses required to be registered under the rules include commercial general construction, drywall, plastering, electrical wiring, finish carpentry, flooring, framing carpentry, glass and glazing, insulation, masonry and stone work, plumbing, concrete work, roofing, siding, building site preparation and/or stabilization, structural steel, tile and terrazzo, wall coverings, and other building or equipment specialties.

The department estimates that there would be 30,000 contracting businesses that would be required to obtain registrations. The department proposes to charge \$100 for a 4-year, building contractor registration. There is also a \$15 initial application fee that would be waived if the applicant applies and pays for the registration via the internet. The department estimates that it would realize approximately \$806,250 in revenue annually.

The department anticipates that the workload associated with this registration can be managed with information technology usage and within current staff levels associated with the administration of the commercial building code program and the one- and 2- family dwelling code program.

Long-Range Fiscal Implications
No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/James Quast, 266-9292

Authorized Signature/Telephone No.

Jan Oh 6-8976

Date
2-23-09

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

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Comm 5.30 Emergency Rule

Amendment No.

Subject
 Building Contractor Registration

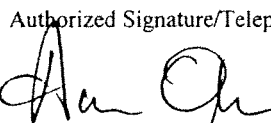
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

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	\$ -
(FTE Position Changes)	(0 FTE)	(- FTE)
State Operations - Other Costs	0	-
Local Assistance	0	-
Aids to Individuals or Organizations	0	-
TOTAL State Costs By Category	\$	\$ -
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	806,250	-
SEG/SEG-S	0	-
TOTAL State Revenues	\$ 806,250	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 806,250	\$ 0

Agency/Prepared by: (Name & Phone No.)
 Commerce/James Quast, 266-9292

Authorized Signature/Telephone No.
 6-8976

Date
 2-23-09



**ORDER OF THE
DEPARTMENT OF COMMERCE**

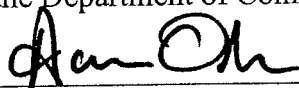
**EMERGENCY RULE RELATING TO TAX BENEFITS FOR JOB CREATION,
CAPITAL INVESTMENT, EMPLOYEE TRAINING, AND CORPORATE
HEADQUARTERS**

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the 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. In accordance with section 9110 (4) in 2009 Wisconsin Act 2, this rule will remain in effect until July 1, 2010, or the date on which corresponding permanent rules take effect, whichever is sooner.

Dated at Madison this 24
day of JUNE, 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 100
Amendment No. if Applicable

Subject

Tax benefits for job creation, capital investment, employee training, and corporate headquarters

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

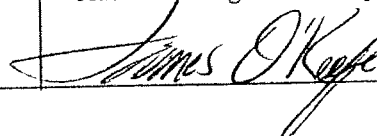
Although the rules will newly result in review of documentation relating to certifying applicants as eligible to then claim allocated tax credits for job creation, capital investment, employee training, and corporate headquarters, the number of these reviews and allocations is expected to be about the same as in the five development-zone programs that are being replaced by this program. 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 credits for job creation, capital investment, employee training and corporate headquarters.

Long-Range Fiscal Implications
None known.

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

Authorized Signature/Telephone No.



Date

6/17/09

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 100

Amendment No.

Subject

Tax benefits for job creation, capital investment, employee training, and corporate headquarters.

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

6/17/09

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce adopts an order to create chapter Comm 100 relating to tax incentives for job creation, capital investment, employee training and corporate headquarters, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Sections 560.70 (2m) (b) and 560.701 to 560.706 – as created by 2009 Wisconsin Act 2.

2. Statutory Authority.

Sections 227.11 (2) (a), 560.70 (2m) (b) and 560.706 (2).

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 560.70 (2m) (b) authorizes the Department to promulgate rules specifying circumstances where a full-time job may consist of fewer than 2,080 hours per year. Section 560.706 (2) requires the Department to promulgate rules for implementing sections 560.701 to 560.706 of the statutes, as created by 2009 Act 2, relating to tax incentives for job creation, capital investment, employee training, and corporate headquarters.

4. Related Statute or Rule.

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin. For example, sections 560.70 to 560.7995 of the Statutes and chapters Comm 107, 112 and 118 address tax-benefit programs for community development zones, development opportunity zones, enterprise development zones, agricultural development zones, enterprise development zones, technology zones and airport development zones. The changes to chapter 560 of the Statutes that were included in 2009 Wisconsin Act 2 and the emergency rules which are the subject of this order will consolidate five of the Department's development-zone tax-credit programs into a single, statewide program.

5. Plain Language Analysis.

The rules in this order (1) specify hourly wage ranges and health insurance benefits, and corresponding tax credits for businesses that create full-time jobs having those wages and benefits; (2) define which capital investments are significant, and specify tax credits that may be allocated to those investments; (3) define which employee training is eligible for tax credits, and specify tax

credits that may be allocated to that training; (4) define which business offices are corporate headquarters, and specify tax credits that may be allocated to those offices; (5) establish a methodology for designating economically distressed areas; (6) specify additional tax benefits for businesses in economically distressed areas and benefiting members of targeted groups; (7) establish policies, criteria and methodology for reserving a portion of available tax benefits to rural areas; (8) establish policies, criteria and methodology for reserving a portion of available tax benefits to small businesses; (9) establish policies and criteria for certifying a business that may be eligible for tax benefits equal to or greater than \$3 million; (10) establish policies and criteria for allocating tax credits beyond the general limits that are otherwise specified; (11) establish a minimum time period for maintaining positions that are created, retained or trained as a result of the tax credits addressed by these rules; and (12) establish the application, certification, verification, reporting, filing and contract procedures for the tax credits addressed by these rules.

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

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level which are exactly like the corresponding credits in 2009 Wisconsin Act 2. The following two federal tax credits may apply to the activities under section 560.702 of the Statutes which are addressed by the rules, but these federal tax credits are structured differently than the credits in Act 2.

Job creation that is eligible for tax benefits under section 560.702 (1) of the Statutes may also qualify for the federal consolidated Work Opportunity Tax Credit – which includes tax credits for an employer that hires an individual who is: (1) a qualifying Hurricane Katrina employee, (2) a member of a qualifying family with long-term or recent receipt of Temporary Assistance to Needy Families payments, (3) a qualifying food stamp recipient, (4) a qualifying veteran, (5) a qualifying ex-felon, (6) a resident of a designated community, (7) a qualifying summer youth employee, (8) a qualifying recipient of vocational rehabilitative services, or (9) a qualifying recipient of Supplemental Security income.

Capital investments that are eligible for tax benefits under section 560.702 (2) of the Statutes may also qualify for the federal Investment Credit – which includes tax credits for any qualifying rehabilitation of older structures, solar or geothermal energy equipment, advanced coal projects, and gasification projects.

7. Comparison With Rules in Adjacent States.

Michigan

Michigan has several tax credit and tax abatement programs targeting specific business activities – development, manufacture and commercialization of advanced batteries; brownfield clean-up; manufacturers seeking defense contracts; promotion of renewable energy operations; tool and die operations; agricultural processing facilities; and forest products processing facilities. None are comparable to the new tax credit program addressed by the rules in this order.

The Michigan Economic Growth Authority Job Creation Tax Credits and Job Retention Tax Credits may be awarded for up to 20 years and up to 100 percent of an amount equal to the

salaries and wages and employer-paid health care benefits multiplied by the personal income tax rate.

Minnesota

Minnesota's Job Opportunity Building Zone program offers a variety of tax exemptions and tax credits to businesses beginning operations in a designated zone, expanding in a zone, relocating to a zone from another state or relocating to a zone from another Minnesota location if employment is increased by five jobs or 20 percent, whichever is greater, within the first full year of operation in the zone. Businesses may qualify for exemptions to corporate franchise taxes, and income taxes for operators or investors, including capital gains taxes; sales taxes on goods and services used in the zone; property taxes on commercial and industrial improvements; and wind energy production taxes. The program also includes a refundable job credit that is calculated in much the same manner as Wisconsin's Enterprise Zone job credit.

Iowa

Iowa's Enterprise Zone program offers businesses a local property tax exemption of up to 100 percent of the value added to the property for up to 10 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit of up to 10 percent of the qualifying investment, amortized over 5 years.

Iowa's High Quality Job Creation program offers businesses various combinations of the following: a local property tax exemption of up to 100 percent of the value added to the property for up to 20 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit equal to a percentage of the qualifying investment, amortized over 5 years.

Illinois

The Illinois Economic Development for a Growing Economy (EDGE) program offers tax credits as high as the amount of tax receipts collected from state income taxes paid by newly-hired or retained employees as pertaining to the project. Each project must add to the export potential of Illinois, involve capital investment of at least \$5 million and create at least 25 new jobs, or meet requirements set forth by the Illinois Department of Commerce and Economic Opportunity. EDGE credits are available for up to 10 years for each project. Jobs and capital investments must be maintained for the period in which the credits are claimed.

In addition to a variety of tax exemptions, the Illinois Enterprise Zone program offers an investment credit of 0.5 percent and a jobs credit of \$500 per eligible employee hired to work in a zone during a taxable year. Eligible employees are individuals who are certified as economically disadvantaged or as dislocated workers.

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 2; (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 from the Wisconsin Economic Development

Authority; 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 2. This Act consolidates five of the Department's development-zone tax-credit programs into a single, statewide program. The Act applies its private-sector requirements only to businesses for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rules are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for job creation, capital investment, employee training and corporate headquarters.

11. Agency Contact Person.

Todd Jensen, Wisconsin Department of Commerce, Bureau of Business Finance, 201 West Washington Avenue, Madison, WI, 53703; telephone: (608) 266-3074; E-Mail: Todd.Jensen@commerce.state.wi.us.

File reference: Comm 100/rules analysis-e

SECTION 1. Chapter Comm 100 is created to read:

Chapter Comm 100

**TAX BENEFITS FOR JOB CREATION, CAPITAL INVESTMENT, EMPLOYEE TRAINING,
AND CORPORATE HEADQUARTERS**

Comm 100.10 Purpose, scope and authority. (1) The purpose and scope of this chapter is to establish all of the criteria specified in s. 560.706 (2), Stats., relating to tax incentives for job creation, capital investment, employee training and corporate headquarters.

(2) This chapter is promulgated under the authority of s. 560.706 (2), Stats.

Note: This chapter is intended to provide the Department's statewide process by which businesses can obtain tax credits in exchange for creating jobs, or for retaining jobs that would otherwise be lost. Because of the limited economic-development resources that are available, the main role of the Department in this process is to target these tax credits to where they will have the most impact, while also ensuring that rural areas do not lose access to the benefits.

Note: The Department also has rules that address tax benefits for some specific businesses, such as chapter Comm 130, which addresses tax credits for fuel and electricity used in manufacturing; chapter Comm 132, which addresses tax credits for investments in dairy manufacturing facilities; and chapter Comm 133, which addresses tax credits for film productions.

Comm 100.15 Definitions. In this chapter:

(1) "Certified business" means a business or natural person certified by the department under this chapter.

(2) "Contract" includes a written agreement that establishes responsibilities which a certified business will fulfill with regard to the department's terms and conditions in allocating a tax credit.

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

(4) (a) "Full-time job" has the meaning given in s. 560.70 (2m) (a), Stats, except as provided in par. (b).

Note: Under section 560.70 (2m) (a) of the Statutes "full-time job" means "a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and benefits that are not required by federal or state law. 'Full-time job' does not include initial training before an employment position begins."

(b) "Full-time job" also means a regular, non-seasonal full-time position in which an individual, as a condition of employment, is required to work at least 1,950 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage, and benefits which are not required by federal or state law.

(5) "Person" includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

(6) "Significant investments in the training or re-education of employees" means investments in eligible training, as established in s. Comm 100.30.

(7) "Tax benefit" means a tax credit allocated by the department under this chapter.

Comm 100.20 Hourly wages, and health insurance benefits. (1) Per-employee tax credits under this chapter shall be based on Table 100.20 and compliance with sub. (2) (a), (b) or (c).

Table 100.20

Tier	Wage Range	Tax Credit
1	Full-time jobs paying from 150% to less than 200% of the federal minimum wage	Up to \$3,000 per job
2	Full-time jobs paying from 200% to less than 250% of the federal minimum wage	Up to \$5,000 per job
3	Full-time jobs paying 250% or more of the federal minimum wage	Up to \$7,000 per job

(2) (a) The employer covers at least 50% of the health insurance benefit premium costs for the employees.

(b) At least 50% of the full-time employees utilize the health insurance benefits provided by the employer.

(c) Other employee health insurance benefits are provided that are acceptable to the department.

Comm 100.25 Eligible capital investments. (1) (a) In this section, "significant investment of capital" means a capital investment in a project, beyond a certified business's normal capital expenditures, that complies with either par. (b) or (c) and is needed to achieve a specific purpose acceptable to the department. These specific purposes include diversifying product lines, and modernizing and enhancing the efficiency of production processes.

(b) The amount of the investment is at least \$10,000 for each full-time employee working at the certified business's project location, or \$1,000,000, whichever is less.

(c) The investment will retain existing full-time jobs that may be lost without the investment.

(2) Eligible capital investments include the purchase or lease price of depreciable tangible personal property, and the amount that is expended to acquire, construct, rehabilitate, remodel or repair real property. This includes directly-related consulting services, other fees and permits, and equipment installation costs. It does not include working capital for items such as employment costs, moving costs, intellectual property, unrelated fees and permits.

(3) At least 50% of the use of the equipment, machinery, real property or depreciable tangible personal property shall be for the certified business's operations in Wisconsin.

(4) (a) The equipment, machinery, real property, or depreciable tangible personal property may not be previously owned.

(b) In this section, "previously owned" means equipment, machinery, real property or depreciable tangible personal property that the certified business or a related person owned during the two years prior to submitting an application for the tax credits.

(c) In this section, "related person" includes a family member, such as a brother, sister, parent, grandparent, child, grandchild, spouse or in-laws; a corporation or any entity that owns more than 50% of the certified business; or any corporation which is part of the same controlled group of corporations.

(5) A certified business may qualify for the tax credit under this section for an amount expended to construct, rehabilitate, remodel or repair real property if the business began the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the date specified by the department under s. Comm 100.70 (2) (b). Physical work does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications or stabilizing property to prevent deterioration.

(6) Businesses whose primary activity includes such things as retail, commercial development, recreation, entertainment or direct health care in nature are not eligible to earn tax credits through capital investment.

(7) Businesses certified for tax credits under the definition in sub. (1) (a) may be allocated tax credits of up to 3% of their eligible capital investment for equipment, and up to 5% of their capital investment for real property.

(8) Businesses certified for tax credits under the definition in sub. (1) (b) may be allocated tax credits based on the retention of existing full-time jobs according to Table 100.20.

Comm 100.30 Training or re-education of employees. (1) In this section, "eligible training" includes instruction that will enhance an employee's general knowledge, employability and flexibility in the workplace; develop skills unique to an individual company's workplace or equipment; or develop skills that will increase the quality of the company's product.

(2) **INELIGIBLE TRAINING.** Ineligible training includes training that addresses any of the following:

- (a) Orientation.
- (b) Administration and compensation systems.
- (c) Credit or degree courses.
- (d) Diversity.

- (e) Consulting services, including strategic planning.
- (f) Sales training.
- (g) Personal development, such as for General Educational Development testing.
- (i) Human resources practices.
- (j) Non-job-related training.
- (k) Stand-alone basic or remedial training.
- (L) Non-skill-related assessments.
- (m) State or federally-mandated programs.
- (n) General safety procedures.
- (o) English as a second language.
- (p) Basic skills.
- (q) On-the-job-training that involves the manufacture of product for sale.

(3) GENERAL. (a) Tax credits may be allocated for eligible training that is provided to existing and new employees in full-time jobs.

(b) The type of training shall be pre-approved by the department. Certified businesses shall obtain written notification of the department's allocation of tax credits prior to contracting for the training.

(c) Training shall be related to a specific project. Routine training shall be ineligible.

(d) Training may be on- or off-site, but shall be performed by a provider that is approved or otherwise authorized by the department.

(4) TAX BENEFIT SCHEDULE. Tax credits under this section will be allocated at a rate of up to 50% of the eligible training costs. Eligible training costs may include trainee wages, trainer costs and trainer materials.

Comm 100.35 Location or retention of corporate headquarters. (1) In this section, "corporate headquarters" means the office of a business engaged in a multistate or multinational business. "Multistate or multinational" business means a business with major operations in two or more states or nations. It is the location where staff members or employees are physically employed and where the majority of the company's financial, personnel, legal, planning or other headquarters functions are handled on a divisional, regional, national or global basis. Company functions or services may include accounts receivable and payable, accounting, data processing,

distribution management, employee benefit plan, financial and securities accounting, information technology, insurance, legal, merchandising, payroll, personnel, purchasing or procurement, reporting and compliance, tax, treasury or other headquarters-related services.

(2) Tax credits under this section will be allocated on the basis of corporate headquarters positions created or retained by a project, or retained in response to substantial potential for loss, according to Table 100.35.

Table 100.35

Tier	Wage Range	Tax Credit
1	Full-time jobs paying from 150% to less than 200% of the federal minimum wage	Up to \$4,000 per job
2	Full-time jobs paying from 200% to less than 250% of the federal minimum wage	Up to \$6,000 per job
3	Full-time jobs paying from 250% to less than 500% of the federal minimum wage	Up to \$8,000 per job
4	Full-time jobs paying 500% or more of the federal minimum wage	Up to \$10,000 per job

Comm 100.40 Methodology for designating economically distressed areas. In designating economically distressed areas, the department shall consider the most current data available for the area and state using the following indicators and sources, or other sources acceptable to the department:

- (1) Unemployment rate – from the department of workforce development.
- (2) Percentage of families with incomes below the poverty line established under 42 USC 9902 (2) – from the U.S. census bureau.
- (3) Median family income – median household income from the U.S. census bureau.
- (4) Median per capita income – from the department of workforce development.
- (5) Average annual wage – from the department of workforce development.
- (6) Manufacturing assessment values, by county – from the department of revenue.
- (7) Other significant or irregular indicators of economic distress, such as a natural disaster, or plant closings and layoffs – from the department of workforce development.

Comm 100.45 Additional tax benefits for businesses in economically distressed areas and benefiting members of targeted groups. (1) Tax-credit allocations to certified businesses with projects in areas designated by the department as economically distressed may be increased by up to 50% above the normal allocation level.

(2) (a) Certified businesses conducting at least one eligible activity that benefits, creates, retains or significantly upgrades full-time jobs for, or that trains or re-educates members of a targeted group may qualify for up to \$500 in additional tax benefits for each member of a targeted group who is certified as described in s. 560.70 (4m), Stats.

(b) In this section, "member of a targeted group" has the meaning given in s. 560.70 (4m), Stats.

Note: Section 560.70 (4m) of the Statutes reads as follows: " 'Member of a targeted group' means a person who resides in an area designated by the federal government as an economic revitalization area, a person who is employed in an unsubsidized job but meets the eligibility requirements under s. 49.145 (2) and (3) for a Wisconsin Works employment position, a person who is employed in a trial job, as defined in s. 49.141 (1) (n), or in a real work, real pay project position under s. 49.147 (3m), a person who is eligible for child care assistance under s. 49.155, a person who is a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income recipient, a general assistance recipient, an economically disadvantaged ex-convict, a dislocated worker, as defined in 29 USC 2801 (9), or a food stamp recipient, if the person has been certified in the manner under 26 USC 51 (d) (13) (A) by a designated local agency, as defined in 26 USC 51 (d) (12)."

Comm 100.50 Policies, criteria and methodology for reserving a portion of the tax benefits for rural areas. (1) The department shall reserve \$5,000,000 in tax credits for projects taking place in rural areas. This reservation shall expire on June 30, 2014.

(2) In considering whether to reserve tax credits to eligible applicants in a rural area, the department shall consider the relative employment impact of the project on the area.

(3) In this section and s. Comm 100.70 (1) (b) 8., "rural area" means a city, village or town with a population of 6,000 or less in a county having a population density of less than 150 persons per square mile.

Comm 100.55 Policies, criteria and methodology for reserving a portion of the tax benefits for small businesses. (1) The department shall reserve \$5,000,000 in tax credits for projects involving small businesses. This reservation shall expire on June 30, 2014.

(2) In considering whether to reserve tax credits to eligible small businesses, the department shall consider the relative employment impact of the project.

(3) In this section, "small businesses" means businesses with fewer than 100 employees, including employees of any subsidiary or affiliated organization.

Comm 100.60 Policies and criteria for certifying a business that may be eligible for benefits equal to or greater than \$3 million. Certified businesses may be awarded tax-credit allocations equal to or greater than \$3 million only if approved by the department secretary or designee.

Comm 100.65 Policies and criteria for extraordinary opportunities or potential losses. Where an extraordinary opportunity for job creation or job retention exists, the department secretary may approve allocating tax credits beyond the limits established in this chapter. The factors considered in determining whether to approve an allocation under this section include the following:

(1) The scale or urgency of the project.

(2) The nature or quality of the jobs addressed by the project.

(3) The degree of existing or potential distress addressed by the project, such as whether the overall well-being of a community is at stake.

(4) The project's potential for substantially impacting a community or this state.

Comm 100.70 Procedures for implementing ss. 560.701 to 560.706, Stats. (1)

APPLICATION. (a) A person who intends to conduct at least one eligible activity described under s. 560.702, Stats., may apply for certification and allocation of tax credits, on a form prescribed by the department.

(b) Upon receipt of an application, the department shall consider one or more of the following factors in determining whether to certify the business and allocate tax credits:

1. Whether the project will serve a public purpose.
2. Whether the project might not occur without the allocation of tax credits.
3. The extent to which the project will be financed with funds not provided by this state.
4. Whether the project will displace workers in this state.
5. The extent to which the project will retain or increase employment in this state.
6. The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.
7. Whether the project will be located in an economically distressed area.
8. Whether the project will be located in a rural area.
9. The extent to which the project will increase geographic diversity of available tax benefits throughout this state.
10. The financial soundness of the business.
11. The ability of the business to utilize state tax credits.
12. Any previous financial assistance that the business received from the department.

(2) CERTIFICATION. (a) The department shall notify each applicant of whether it has been certified for tax benefits.

(b) A certified business may qualify for tax benefits only for eligible activities that occur after an eligibility date established by the department.

(3) DESIGNATED AGENCY FOR TARGETED GROUPS. (a) The department shall inform a certified business of the designated agency under s. 560.70 (4m), Stats., that is responsible for certifying workers who are members of targeted groups.

(b) 1. The designated agency may charge a fee not to exceed \$50 for each certification of eligibility under par. (a) for tax credits, to employers who request certification services and who have been found eligible by the designated agency. The fee shall be based on the actual cost of providing the certification. The fee shall be collected by invoice during the completion of the certification or thereafter. The designated agency may charge interest on late payments. A certified business that fails to make payment as billed by the designated agency may be ineligible for the receipt of further certification services.

2. The department may not verify any tax credits under sub. (5) until after any outstanding fees under this paragraph have been paid.

(4) CONTRACT. The certified business shall enter into a contract with the department for the tax benefits under this chapter, prior to their release by the department.

(5) FILING WITH THE DEPARTMENT OF REVENUE. (a) A certified business may file with the department of revenue for tax benefits under this chapter using forms acceptable to that department.

(b) Prior to filing for tax benefits under par. (a), a certified business shall complete and file with the department of commerce an annual project report supporting the tax benefit claim, on a form prescribed by the department. The annual project report shall include all of the following:

1. The status of the certified business's project, which may include the number of full-time jobs created, retained or significantly upgraded; the number of employees in full-time jobs who are trained, and documentation of eligible training expenses; the total amount invested, and documentation of eligible investments; and other supporting information relating to the tax benefits to be claimed by the certified business.

2. Documentation of whether the certified business met the minimum benchmarks and outcomes identified in the contract under sub. (4).

(c) The department of commerce shall verify the tax benefits that are to be claimed, and may request additional information from the certified business to support them. No person may file with the department of revenue for tax benefits under this chapter without the written verification of the department.

(6) PERIOD OF TIME JOBS MUST BE MAINTAINED. (a) Positions that are created, retained or trained as a result of the tax credits claimed under this chapter shall be maintained for at least five years after the certification date.

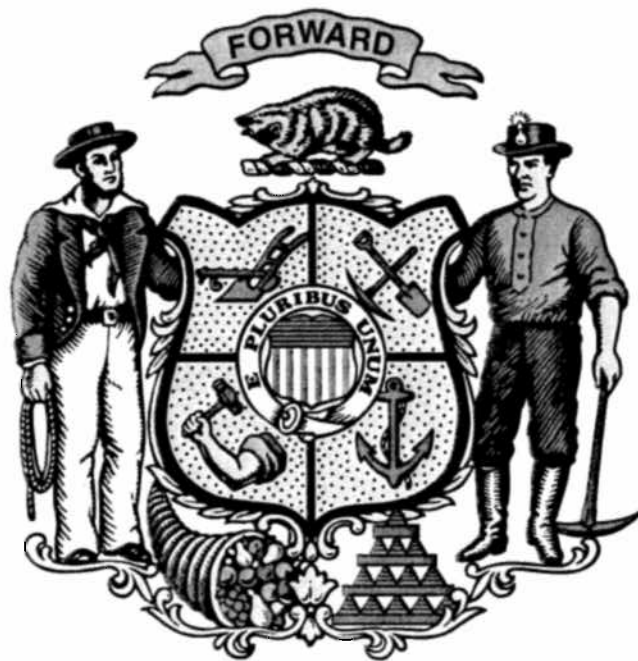
(b) Any failure to comply with par. (a) shall be subject to penalties prescribed in the contract under sub. (4).

(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 100/rules 2009e7ac



RULES CERTIFICATE

Emergency Rule Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard J. Leinenkugel, Secretary of the Department of Commerce,

and custodian of the official records of said department, do hereby certify that the annexed emergency rule

relating to the approved version of REScheck software used to show compliance with Uniform Dwelling
Code thermal envelope requirements

(Subject)

was duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the department and
that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set
my hand at 201 West Washington Avenue
in the city of Madison, this 31
day of AUGUST A.D. 2009

Alan Oden
for the Secretary

ORDER OF ADOPTION

Emergency Rule Department of Commerce

Pursuant to authority vested in the Department of Commerce by section(s) 101.02 (1), 101.63 (1),
101.64 (3), 101.72 and 101.74

____ Stats., the Department of Commerce creates; amends;

repeals and recreates; repeals and adopts an emergency rule of Wis. Admin. Code chapter(s):

Comm 22.31 Energy Conservation
(number) (Title)

Pursuant to section 227.24 (1)(c), Stats., the attached emergency rule shall take effect on _____
publication in the official state newspaper.

Adopted at Madison, Wisconsin this

date: 8/31/09

DEPARTMENT OF COMMERCE

Ann Oh
for the Secretary

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Comm 22.31 (2) (b)
Amendment No. if Applicable

Subject

Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

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

2 Decrease Costs
 Permissive Mandatory

4 Decrease Revenues
 Permissive Mandatory

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

The emergency rule repeals code language requiring a specific version of REScheck software be used to show compliance with Uniform Dwelling Code thermal envelope requirements. Amending s. Comm 22.31 (2) (b) will not affect department revenue or expenditures.

Long-Range Fiscal Implications

No long range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/Larry Swaziek, 267-7701

Authorized Signature/Telephone No.

Alan O... 6-8976

Date

8/5/09

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

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Comm 22.31 (2) (b)

Amendment No.

Subject

Approved Software to Show Compliance with Uniform Dwelling Code Thermal Envelope Requirements

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

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	\$ -
(FTE Position Changes)	(0 FTE)	(- FTE)
State Operations - Other Costs	0	-
Local Assistance	0	-
Aids to Individuals or Organizations	0	-
TOTAL State Costs By Category	\$	\$ -
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 0	\$ -
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	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	\$ -
GPR Earned	0	-
FED	0	-
PRO/PRS	0	-
SEG/SEG-S	0	-
TOTAL State Revenues	\$ 0	\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

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

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

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

Commerce/Larry Swaziek, 267-7701

Authorized Signature/Telephone No.

Ann O'Leary 6-8976

Date

8/31/09

DEPARTMENT OF COMMERCE
EMERGENCY RULE
RELATING TO
ENERGY CONSERVATION
IN THE WISCONSIN UNIFORM DWELLING CODE

Finding of Emergency Rule

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Recently, chapter Comm 22, relating to energy conservation, was repealed and recreated to bring the Wisconsin requirements in line with the national model energy code. Effective April 1, 2009, chapter Comm 22 incorporates new prescriptive requirements that apply to individual components such as walls, windows, skylights, doors and ceilings. Within that subsection is section Comm 22.31 (2) (a), that allows the use of a "total dwelling thermal envelope" method, and (2) (b), that allows the use of REScheck software, version 4.1.0, or later, to calculate compliance with the Uniform Dwelling Code thermal envelope requirements.
2. The U.S. Department of Energy's Building Energy Codes Program develops and distributes REScheck software. The software program simplifies and clarifies residential code compliance with the Model Energy Code (MEC) and the International Energy Conservation Code (IECC). REScheck software makes it easier for designers, builders, product manufacturers and code officials to comply with energy codes based on the IECC or ASHRAE/IESNA Standard 90.1 requirements. Also, REScheck can be tailored to meet state-specific codes.
3. The department included the REScheck software edition requirement in anticipation that Version 4.1.0 would be compatible with the current code. Working with Pacific Northwest Laboratories, who contracts with the U.S. Department of Energy to develop the REScheck software, the department developed state-specific energy calculations that were not incorporated into REScheck software until Version 4.2.2. The calculations that reflect the current code are identified in the software as "Wisconsin 2009." Versions prior to 4.2.2 do not have the code choice "Wisconsin 2009."
4. Previous versions of REScheck, including Version 4.1.0, do not meet nor support the requirements of Wisconsin's current energy code. In fact, Version 4.1.0 includes other values, such as gross wall trade-offs and appliance credits that are not included in chapter Comm 22 that became effective April 1, 2009.


5. The department recognizes that without promulgating this emergency rule, there would be confusion and miscalculations surrounding the use of Version 4.1.0 and other previous and out-of-date versions of REScheck software to calculate compliance with Uniform Dwelling Code thermal envelope requirements.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper.

Dated at Madison this

31

day of AUGUST, 2009,
by the Department of Commerce.


for Richard J. Leinenkugel, Secretary

The Wisconsin Department of Commerce adopts an order to amend s. Comm 22.31 (2) (b) relating to the approved version of REScheck software used to show compliance with Uniform Dwelling Code thermal envelope requirements.

Analysis of Rule

1. Statutes Interpreted

Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

2. Statutory Authority

Sections 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74, Stats.

3. Related Statute or Rule

Chapters Comm 20 to 25, Wisconsin Uniform Dwelling Code

4. Explanation of Agency Authority

Under the statute sections listed above, the Department of Commerce has the authority to promulgate rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings. Sections 101.63 (5) and 101.73 (8), Stats., require the department to review these rules on a biennial basis. Currently, the department has fulfilled this responsibility by promulgating the Wisconsin Uniform Dwelling Code, chapters Comm 20 to 25, effective April 1, 2009.

5. Summary of Proposed Rule

The emergency rule amends a provision that requires a specific version of REScheck software be used to calculate compliance with the dwelling thermal envelope requirements in chapter Comm 22. The amendment is necessary because Version 4.1.0, and some subsequent versions, that are specified in s. Comm 22.31 (2) (b) do not meet nor support the requirements of Wisconsin's energy code. State-specific energy conversation provisions were not incorporated into REScheck software until Version 4.2.2.

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

An Internet-based search of the code of federal regulations and the federal register did not identify any federal requirements relating to REScheck software editions and their compatibility to state-specific codes. There are no existing or proposed federal regulations that address the specific issue or impact the activities to be regulated by this rule.

7. Comparison with Rules in Adjacent States

A search of the U.S. Department of Energy’s Building Energy Codes Program’s web site found that Illinois, Iowa and Michigan use REScheck to show compliance with their energy codes. Minnesota, which has a state-specific code, is not REScheck compatible. Illinois does not have a state residential code while Iowa has adopted the 2006 IECC and Michigan the 2003 International Residential Code (IRC).

An Internet-based search of the residential regulatory programs in the states of Illinois, Iowa, Michigan and Minnesota revealed that none of these states had rules regarding specific versions of REScheck as addressed by the Wisconsin rule being amended under this emergency rule.

8. Summary of Factual Data and Analytical Methodologies

The emergency rule was developed using information gathered when the department learned that Wisconsin-specific energy calculations were incorporated into REScheck Version 4.2.2. Previous versions, including Version 4.1.0 which is specified in Comm 22.31 (2) (b), do not include these state-specific calculations and formulas, and therefore, do not support chapter Comm 22 that became effective April 1, 2009.

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

The department believes the rule will not increase the effect on small businesses from what the current rules impose on them. An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

Larry Swaziek, Program Manager, Larry.swaziek@wisconsin.gov, (608) 267-7701.

SECTION 1. Comm 22.31 (2) (b) is amended to read:

Comm 22.31 (2) (b) *Software ~~edition~~ version*. If ~~the~~ a REScheck software program is used to show compliance with this section, ~~the~~ a version approved by the department shall be 4.1.0, or later used.

Note: ~~Any~~ The downloadable version of REScheck ~~with a beginning number of 3 or smaller will not support~~ 4.2.2, Wisconsin 2009 Code, meets the requirements of this code.

(END)

EFFECTIVE DATE

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

(Note: Publication Date, September 5, 2009)