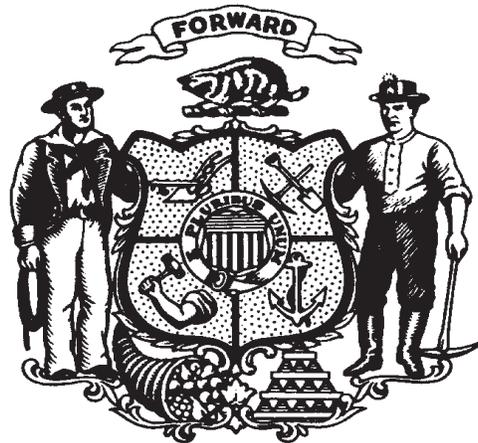


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Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 10**

Agriculture, Trade and Consumer Protection:

Creates section ATCP 21.21, relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state. **EmR1038**

Creates Chapter ATCP 53, relating to agricultural enterprise areas. **EmR1040**

Repeals and recreates Chapter ATCP 20, relating to seed labeling and sales. **EmR1048**

Children and Families:

Safety and Permanence, Chs. DCF 37–59

Creates sections DCF 57.485 and 57.49 (1) (am), relating to determination of need for new group homes. **EmR1034**

Repeals Chapter DCF 38 and revises Chapter DCF 56, relating to foster care. **EmR1050**

Commerce:

Financial Resources for Businesses and Communities, Chs. Comm 100—

Creates Chapter Comm 135, relating to tax credits for investments in food processing plants and food warehouses. **EmR1019**

Creates Chapter Comm 139, relating to rural outsourcing grants. **EmR1026**

Creates Chapter Comm 103, relating to certification of disabled–veteran–owned businesses, and affecting small businesses. **EmR1041**

Revises Chapter Comm 139, relating to rural outsourcing grants. **EmR1044**

Government Accountability Board:

Creates section GAB 1.91, relating to organizations making independent disbursements. **EmR1016**

Repeals and recreates Chapter GAB 4, relating to observers at a polling place or other location where votes are being cast, counted or recounted. **EmR1035**

Amends section GAB 1.28, relating to the definition of the term “political purpose.” **EmR1049**

Insurance:

Creates section Ins 3.35, relating to colorectal cancer screening coverage and affecting small business. **EmR1042**

Amends section Ins 3.37 (1) to (5) (intro); and creates sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business. **EmR1043**

Revises section Ins 6.07 (4) and (9), relating to readability and electronic access to insurance policies and affecting small business. **EmR1101**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Creates section NR 40.02 (2), relating to the identification, classification and control of invasive species. **EmR1036**

Creates section NR 27.03 (3) (a), relating to adding cave bats to Wisconsin's threatened species list. **EmR1037**

Creates sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8) relating to the identification, classification and control of invasive bat species. **EmR1039**

Repeals section NR 40.02 (28m), amends section NR 40.04 (3m), and repeals and recreates section NR 40.07 (8), relating to the identification, classification and control of invasive species. **EmR1045**

Environmental Protection — Air Pollution Control, Chs. NR 400—

Revises Chapters NR 400, 405 and 407, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business. **EmR1046**

Public Instruction:

Creates Chapter PI 46, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils. **EmR1051**

Regulation and Licensing:

Creates section RL 91.01 (3) (k), relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker. **EmR0827**

Creates section RL 180.02 and revises section RL 181.01, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife. **EmR0828**

Revises Chapters RL 110 to 116, relating to the regulation of professional boxing contests. **EmR1031**

Creates Chapters RL 192 to 196, relating to the regulation of mixed martial arts sporting events. **EmR1032**

Regulation and Licensing — Barbering and Cosmetology Examining Board:

Revises Chapters BC 9 and 11, relating to late renewal and continuing education. **EmR1047**

Technical College System Board:

Amends Chapter TCS 17, relating to training program grant funds. **EmR1025**

Scope Statements.**Pages 11 to 12**

Commerce:

Revises Chapter Comm 90, relating to public swimming pools and water attractions.

Regulation and Licensing — Veterinary Examining Board

Revising sections VE 2.01 (2), 3.03 and 3.03 (5) to comply with the National Board of Veterinary Medical Examiners (NBVME) contract requirements, and to make the rules consistent with recent legislation allowing foreign veterinary graduates to show completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to completion of the Educational Commission for Foreign Veterinary Graduates Certification program (ECFVGC).

Transportation:

Revises Chapter Trans 405, relating to siting noise barriers.

Submittal of Rules to Legislative Council Clearinghouse.

Page 13

Commerce:

Financial Resources for Businesses and Communities, Ch. Comm 100 —

Creates Chapter Comm 102, relating to the Wisconsin Enterprise Zone Program. **CR 11–009**

Revises Chapter Comm 138, relating to the woody biomass harvesting and processing credit. **CR 11–010**

Creates Chapter Comm 101, relating to tax credits for jobs and training. **CR 11–012**

Regulation and Licensing — Barbering and Cosmetology Examining Board

Revise Chapters BC 9 and 11, relating to license renewal and continuing education. **CR 11–011**

Rule–Making Notices.

Pages 14 to 21

Commerce:

Financial Resources for Businesses and Communities, Chs. Comm 100 —

Hearing on proposed rules in Chapter Comm 102 relating to the Wisconsin Enterprise Zone Program, and affecting small businesses. **CR 11–009**

Hearing on proposed rules in Chapter Comm 138 relating to investment tax credits for harvesting or processing woody biomass, and affecting small businesses. **CR 11–010**

Hearing on proposed rules in Chapter Comm 101 relating to tax credits for jobs and training, and affecting small businesses. **CR 11–012**

Regulation and Licensing — Barbering and Cosmetology Examining Board:

Hearing to consider an emergency rule and an order adopting permanent rules to amend section BC 9.02; and to repeal and create Chapter BC 11, relating to late renewal and continuing education. **EmR1047, CR 11–011**

Notice of Suspension of an Administrative Rule.

Page 22

Emergency Rules Now in Effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection (3)

1. EmR1038 — Rule adopted to create **section ATCP 21.21**, relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state.

Finding of emergency

(1) Thousand cankers disease is an emerging fungal disease that can be carried by the walnut twig beetle (the beetle is native to this country). The disease poses a serious threat to black walnut trees, an important forest species in Wisconsin. Black walnut is known for its highly valuable lumber, which is used for finished products such as furniture, musical instruments and gun stocks. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southeastern part of the state. Wisconsin businesses export over \$4 million in black walnut products annually.

(2) Thousand cankers disease was first observed in New Mexico in the 1990's. The disease has spread throughout the western United States, causing dieback and mortality in black walnut trees. In July, 2010, the disease was also confirmed in the Knoxville, Tennessee area. The Tennessee infestation is

the first confirmed infestation east of the Mississippi River, the native range of the black walnut tree.

(3) Thousand cankers disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. The disease has not yet been found in Wisconsin.

(4) Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. It is important to restrict the import of host materials from infested areas, to prevent the disease from being introduced into Wisconsin. The disease, if introduced into Wisconsin, could cause great damage to Wisconsin's economically-important and environmentally important walnut forest resource.

(5) It is important to restrict the import of host materials from infested areas as soon as possible. Without this emergency rule, host materials may be imported into Wisconsin from infested areas without adequate safeguards to prevent the introduction of thousand cankers disease into this state.

(6) It would take over a year to adopt the necessary import restrictions by the normal rulemaking procedure prescribed in ch. 227, Stats. DATCP is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking procedures. This temporary emergency rule is necessary to protect the public peace, health, safety and welfare, and to help prevent the introduction of a serious plant disease in this state, pending the adoption of a "permanent" rule by the normal procedure.

Publication Date:	November 1, 2010
Effective Dates:	November 1, 2010 through March 30, 2011
Hearing Date:	January 26, 2011

2. EmR1040 — Rule adopted to create **Chapter ATCP 53**, relating to agricultural enterprise areas.

Exemption from Finding of Emergency

Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

The department views s. 91.84(2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

Publication Date:	November 9, 2010
Effective Dates:	January 1, 2011 until the Department modifies or repeals the rule

3. EmR1048 — Rule adopted to repeal and recreate **Chapter ATCP 20**, relating to seed labeling and sales.

Finding of Emergency

Pursuant to sections 93.07(1) and 94.45(6), Stats. This emergency rule is also adopted pursuant to the nonstatutory provision in 2009 Wis. Act 28, section 9103(3).

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non-statutory provision, contained in section 9103(3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency. Under this non-statutory provision, the interim rules may remain in effect until July 1, 2011 or until the effective date of proposed “permanent” seed rules, whichever date is earlier.

Publication Date: January 1, 2011
Effective Dates: January 1, 2011 through July 1, 2011
Hearing Date: January 11, 2011

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

1. EmR1034 — Rule adopted to create **sections DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through the date permanent rules become effective
Hearing Date: October 21, 2010

2. EmR1050 — Rule adopted to repeal **Chapter DCF 38** and revise **Chapter DCF 56**, relating to foster care.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

In the Child and Family Services Review of Wisconsin’s child welfare system this past year, the federal Administration for Children and Families found that Wisconsin is not operating in substantial conformity with a number of federal requirements. In response to this review, the department has submitted a program improvement plan that commits the department to complete implementation of the levels of care system and the child assessment tool throughout the first quarter of 2011. Implementation must begin immediately to

meet this deadline and subsequent dependent deadlines in the remaining 2 years of the program improvement plan.

Publication Date: January 1, 2011
Effective Dates: January 1, 2011 through May 30, 2011
Hearing Dates: February 8, 15, 28, 2011

Commerce (4)

Financial Resources for Businesses and Communities, Chs. Comm 100—

1. EmR1019 — Rule adopted to create **Chapter Comm 135**, relating to tax credits for investments in food processing plants and food warehouses.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule 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.

Publication Date: June 8, 2010
Effective Dates: June 8, 2010 through November 4, 2010
Extension Through: March 11, 2011
Hearing Date: August 17, 2010

2. EmR1026 — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, 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.

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010
Extension Through: March 28, 2011
Hearing Date: October 13, 2010

3. EmR1041 — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled–veteran–owned businesses, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, 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.

Publication Date: November 14, 2010
Effective Dates: November 15, 2010 through April 13, 2011
Hearing Date: February 15, 2011

4. EmR1044 — Rule adopted to revise **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by SECTION 45 (1) (b) of 2009 Wisconsin Act 265, 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.

Publication Date: November 28, 2010
Effective Dates: November 28, 2010 through April 26, 2011
Hearing Date: February 16, 2011

Government Accountability Board (3)

1. EmR1016 — Rule adopted to create **section GAB 1.91**, relating to organizations making independent disbursements.

Finding of Emergency

Pursuant to s. 227.24, Stats., the Government Accountability Board finds an emergency exists as a result of the United States Supreme Court decision *Citizens United v. FEC*, 558 U.S. ___, (No. 08–205)(January 21, 2010). Within the context of ch. 11, Stats, the rule provides direction to organizations receiving contributions for independent disbursements or making independent disbursements. Comporting with *Citizens United*, this emergency rule order does not treat persons making independent disbursements as full political action committees or individuals under s. 11.05, Stats., for the purposes of registration and reporting. With respect to contributions or in–kind contributions received, this emergency rule order requires organizations to disclose only donations “made for” political purposes, but not donations received for other purposes.

The Board adopts the legislature’s policy findings of s. 11.001, Stats., emphasizing that one of the most important sources of information to voters about candidates is available through the campaign finance reporting system. The Board further finds that it is necessary to codify registration, reporting and disclaimer requirements for organizations receiving contributions for independent disbursements or making independent disbursements so that the campaign finance information is available to voters. The rule must be adopted immediately to ensure the public peace and welfare with respect to the administration of current and future elections.

Publication Date: May 20, 2010
Effective Dates: May 20, 2010 through October 16, 2010
Extension Through: February 13, 2011
Hearing Date: August 30, 2010

2. EmR1035 — Rule adopted to repeal and recreate **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

The Government Accountability Board repeals and recreates chapter GAB 4, Election observers, to establish guidelines for election inspectors and observers alike regarding observation by “any member of the public” of the public aspects of the voting process and regarding the conduct of observers at polling places and other locations where observation of the public aspects of the voting process may take place. The Board finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Pursuant to s. 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board’s May 5, 2008 decision to decline to reaffirm the administrative rule EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct by which observers must abide.

The Board further finds that given the public interest in the 2010 General Election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers’ conduct and that an emergency rule governing observer conduct must be adopted prior to the General Election to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 24, 2010
Effective Dates: September 24, 2010 through February 20, 2011
Hearing Date: December 13, 2010

3. EmR1049 — Rule adopted to amend **section GAB 1.28**, relating to the definition of the term “political purpose.”

Finding of Emergency

The Government Accountability Board amends s. GAB 1.28(3)(b), Wis. Adm. Code, relating to the definition of the term “political purpose.” Section GAB 1.28 as a whole continues to clarify the definition of “political purposes”

found in s. 11.01(16)(a)1., Stats., but repeals the second sentence of s. GAB 1.28(3)(b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28(3)(b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. ___, (No. 08–205)(January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board's statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28(3)(b). On October 13, 2010, the Court issued an Opinion and Order denying that injunction request. In denying the injunction, the Court noted that "G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created" and emphasized that "removing the language—for example, by G.A.B. issuing an emergency rule—would be far more 'simple and expeditious' than asking a federal court to permanently enjoin enforcement of the offending regulation." *Wisconsin Club for Growth, Inc. v. Myse*, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28(3)(b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28(3)(b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in

advance of the 2011 Spring Election and any other future elections.

Publication Date: January 7, 2011
Effective Dates: January 7, 2011 through June 5, 2011
Hearing Date: February 16, 2011

Insurance (3)

1. EmR1042 — Rule to create **section Ins 3.35**, relating to colorectal cancer screening coverage and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Beginning December 1, insurers offering disability insurance policies and self-insured governmental plans are required to offer coverage for colorectal cancer screening. In order to ensure there is no gap in coverage the office needs to promulgate guidance as directed s. 632.895 (16m) (d), Stats., in advance of the initial implementation date.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011
Hearing Date: January 25, 2011

2. EmR1043 — Rule to amend **section Ins 3.37 (1) to (5) (intro)**; and to create **sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

Exemption From Finding of Emergency

The legislature by s. 632.89 (4) (b) 2., Stats., provides an exemption from a finding of emergency for adoption of the rule. Section 632.89 (4) (b) 2., Stats., reads as follows:

632.89 (4) (b) 2. Using the procedure under s. 227.24, the commissioner may promulgate the rules under subd. 1., for the period before the effective date of any permanent rules promulgated under subd.1., but not to exceed the period authorized under 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for a rule promulgated under this subdivision.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011
Hearing Date: January 25, 2011

3. EmR1101— Rule adopted to revise **section Ins 6.07 (4) and (9)**, relating to readability and electronic access to insurance policies and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the

cost of implementing the Flesch scores and electronic access to policies significantly exceeded anticipated costs for the insurance industry; a review of state resources indicates insufficient staff to timely review the volume of health insurance policy filings resulting from the flesch score requirement; and it is anticipated the federal department of Health and Human Services (“HHS”) will use National Association of Insurance Commissioners recommendations for the development of standards for a uniform summary of benefits and coverage explanation for all potential policyholders and enrollees. Repealing these provisions now before costly system overhauls will save both the industry and the state significant resources. Further, although it was anticipated that the National Association of Insurance Commissioners was planning to implement a national readability standard, such movement has stalled negating the amendment to prior Flesch readability scores.

The changes contained in this emergency rule will restore prior standards and ease financial constraints for the insurance industry.

Publication Date: February 9, 2011
Effective Dates: February 9, 2011 through July 8, 2011

Natural Resources (4)
Fish, Game, etc., Chs. NR 1—

1. EmR1036 — Rule adopted to create **section NR 40.04 (2) (g)** relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through: *See bold text above*
Hearing Dates: October 25 to 29, 2010

2. EmR1037 — Rule adopted to create **section NR 27.03 (3) (a)** relating to adding cave bats to Wisconsin’s threatened species list.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Wis. Stats., is necessary and justified in establishing rules to protect the public welfare. The proposed rule change seeks to provide protection to Wisconsin cave bat species, which face the

imminent threat of white–nose syndrome. White–nose syndrome has spread across 14 states and 2 Canadian provinces in the last 3 years, spreading up to 800 miles per year. Mortality rates of affected bat colonies reach 100%. The disease was located last spring within 225 miles of the Wisconsin’s southern boarder and 300 miles from the northern boarder. Because the known dispersal distance of the little brown bat is 280 miles, an affected cave is now located within the dispersal range of Wisconsin little brown bats. Listing the cave bat species before white–nose syndrome has been detected in Wisconsin will allow the Department time to work collaboratively with stakeholders to ensure that appropriate conservation measures are developed and in place when white–nose syndrome is first detected. Because of the speed of white–nose syndrome, the Department would not have time to develop appropriate conservation measures if normal rule–making procedures were used and listing was delayed until after white–nose syndrome was detected in Wisconsin. Based on the current location and known rate of spread of the disease, we anticipate the presence of white–nose syndrome in Wisconsin as early as January 2011.

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through February 25, 2011
Hearing Dates: October 25 to 29, 2010

3. EmR1039 (DNR # IS–49–10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)** relating to the identification, classification and control of invasive bat species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: November 3, 2010
Effective Dates: November 3, 2010 through *See bold text above*
Hearing Date: November 29, 2010

4. EmR1045 (DNR # IS–07–11(E))— Rule to repeal **section NR 40.02 (28m)**; to amend **section NR 40.04 (3m)**, and to repeal and recreate **section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS–49–10(E)), relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health,

safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: December 13, 2010
Effective Dates: December 13, 2010 through
 See bold text above

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

EmR1046 (DNR # AM-48-10(E)) — The Wisconsin Natural Resources Board proposes an emergency order to amend **section NR 407.02 (4) (b) (intro.), and Table 3 in 407.05 (5)** and to create **sections NR 400.02 (74m), 400.03 (3) (om), and (4) (go) and (ki), 405.02 (28m), 405.07 (9), 407.02 (8m) and 407.075**, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the forgoing rules into effect prior to the time that it would take if the Department complied with normal procedures.

On April 1, 2010, the U.S. EPA promulgated the first emission standard for gases contributing to climate change, i.e., greenhouse gases or GHG, which will become effective on January 2, 2011. While these standards target automobile emissions, under the Clean Air Act, this action will unintentionally subject stationary sources across the country to complex prevention of significant deterioration (PSD) and Title V permitting and emission control requirements. U.S. EPA attempted to mitigate this unintended effect by promulgating additional rules, which became effective on June 3, 2010, limiting applicability of the permitting requirements. However, Wisconsin sources will not be affected by the new U.S. EPA rules since existing state statute and administrative code do not contain the same applicability limiting provisions. State rules consistent with those at the federal level must be in effect on January 2, 2011 in order to provide the relief U.S. EPA intended for Wisconsin sources. Without these proposed emergency rules, many sources, including municipal landfills, hospitals, asphalt plants, wastewater treatment plants, small wood fired boilers and agricultural digesters, will be considered major emissions sources of GHG, and therefore subject to the permit and emission control requirements for GHG. These permit and control requirements were never intended or designed to address the type or size of sources that could now be affected.

Without the proposed changes, the existing rules would have the potential to overwhelm DNR permitting staff, divert resources away from significant environmental issues, and delay issuance of construction permits for critical projects for expanding businesses.

Therefore, the Department finds that the proposed emergency rules are necessary and appropriate for the preservation of the public welfare.

Publication Date: December 15, 2010
Effective Dates: December 15, 2010 through
 May 15, 2011
Hearing Date: January 21, 2011

Public Instruction

EmR1051 — Rule adopted to create **Chapter PI 46**, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.29 (6), Stats., requires the department to approve training in administering nonprescription drug products and prescription drugs. The statute also specifies that no school bus driver, employee, or volunteer may administer a nonprescription drug product or prescription drug, use an epinephrine auto-injector, or administer glucagon unless he or she has received such training. Because the statutory requirement becomes effective March 1, 2011, administrative rules must be in place as soon as possible so that training programs can be established prior to the effective date of the statutes.

Publication Date: December 28, 2010
Effective Dates: December 28, 2010 through
 May 26, 2011
Hearing Date: January 12, 2011

Regulation and Licensing (4)

1. EmR0827 — Rule adopted creating **section RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Dates: November 26, 2008
 April 13, 2009

2. EmR0828 — Rules adopted to amend section **RL 181.01 (2) (c)**; and to create sections **RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008

3. EmR1031 — Rule adopted revising **Chapters RL 110 to 116**, relating to the regulation of professional boxing contests.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date: August 25, 2010
Effective Dates: September 1, 2010 through January 28, 2011
Extension Through: March 29, 2011
Hearing Date: September 20, 2010

4. EmR1032 — Rule adopted creating **Chapters RL 192 to 196**, relating to the regulation of mixed martial arts sporting events.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date: August 26, 2010
Effective Dates: September 1, 2010 through January 28, 2011
Extension Through: March 29, 2011
Hearing Date: September 20, 2010

Regulation and Licensing — Barbering and Cosmetology Examining Board

EmR1047 — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

Finding of Emergency

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

Publication Date: December 23, 2010
Effective Dates: December 23, 2010 through May 21, 2011
Hearing Date: April 4, 2011
 (See Notice in this Register)

Technical College System Board

EmR1025 — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

Finding of Emergency

The Wisconsin Technical College System Board finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional \$1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009–11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

Due to the sustained decline in economic conditions and reduction in business revenues, technical college districts report that employers are withdrawing participation in approved training grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010
Extension Through: March 28, 2011
Hearing Date: September 28, 2010

Scope Statements

Commerce

Public Swimming Pools and Water Attractions, Ch. Comm 90

Subject

Revises Chapter Comm 90, relating to public swimming pools and water attractions.

Objective of the Rule

The objective of the potential rulemaking project is to clarify and update the department's administrative rules, Chapter Comm 90, relating to public swimming pools and water attractions. This update may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

A specific objective is to reflect in Comm 90 the most recent national standards including the current interpretations by the Consumer Product Safety Commission (CPSC) of the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act). The federal requirements outlined in the VGB Act serve as minimum standards.

The purpose of the rulemaking project is to have a clearly understood code that reflects the application of current construction and remodeling practices, products, standards, model codes and materials. To ensure the health, safety and welfare of Wisconsin citizens using public swimming pools and water attractions, it is important that the code and adopted standards are viable and current.

Policy Analysis

Chapter Comm 90 applies to the design and construction of public swimming pools and water attractions. The last update of chapter Comm 90 began in 2005 and became effective April 1, 2009. The current rules relating to water attractions are based on the 2005 edition of the American National Standards Institute/National Spa and Pool Institute (ANSI/NSPI) standards for aquatic recreation facilities (ANSI/NSPI – 9). The public swimming pool portion of the code was revised to reflect the 2004 edition of ANSI/NSPI – 1 Public Swimming Pools standard.

ANSI/NSPI updates their national standards on a 3-year cycle. Working with the Pool Advisory Code Council, the department will review the most current national standards and base revisions of chapter Comm 90 upon them. In addition, the council and department will correct code clarity problems, incorporate code interpretations that have developed since the last code change, include new technology and options for design and installation, and integrate new code requirements into one or more rule packages.

The alternative of not updating the rule would result in chapter Comm 90 not being current with nationally-recognized standards and federal requirements such as the recent interpretations by the CPSC of the VGB Act. Continuing to use the code as it stands now would create confusion among designers, builders, installers and local inspectors about which drain covers and safety vacuum release systems required by the VGB Act are compliant and

how other materials and standards should be regulated and applied.

The CPSC is looking to Wisconsin and other states to assist with the enforcement of the VGB Act by passing pool and spa barrier and anti-entrapment rules that will help prevent children's drownings and submersion injuries.

Statutory Authority

The statutory authority for chapter Comm 90 is contained in section 145.26, Stats.

Comparison with Federal Regulations

An Internet-based search of the *Federal Register* found that the Consumer Product Safety Commission (CPSC) issued interpretations of the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act) in the March 10, 2010 (Vol. 75, No. 49) and the April 27, 2010, (Vol. 75, No. 80) publications.

An Internet-based search of the *Code of Federal Regulations* (CFR) found the following existing federal rules that impact public swimming pools and water attractions:

- USC Title 16, Volume 2, Chapter II, Part 1207 – The CPSC revises the safety standard for swimming pool slides relating to the installation, maintenance and intended use in all pools as of January 1, 2010.
- USC Title 21, Volume 8, Chapter I, Subpart E – The Food and Drug Administration revises the recirculation and filtration standards for all pools as of April 1, 2010.

Entities Affected by the Rule

This rule will affect any entity involved in the public swimming pool and water attraction industry in Wisconsin. Entities involved in the industry include municipal governments, schools, colleges, universities, hotels, motels, tourist inns and resorts, bed and breakfasts, recreational facilities, fitness centers and campgrounds.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rule is expected to be about 600 hours, depending upon the associated complexity. This time includes reviewing the current codes and related national standards, conducting other research as needed, drafting the rules, consulting and meeting with the Pool Advisory Code Council and processing the rules through public hearings, legislative review and adoption. There are no other resources necessary to develop the rules.

Regulation and Licensing — Veterinary Examining Board

Subject

Revising sections VE 2.01 (2), 3.03 and 3.03 (5) to comply with the National Board of Veterinary Medical Examiners (NBVME) contract requirements, and to make the rules consistent with recent legislation allowing foreign veterinary graduates to show completion of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as an alternative to completion of the Educational Commission for Foreign Veterinary Graduates Certification program (ECFVGC).

Objective of the Rule

Currently, the Veterinary Examining Board's rules do not align with application deadlines for the North American Veterinary Licensing Examination (NAVLE) that are required by our contract with the NBVME. Additionally, recently-passed legislation now allows foreign veterinary graduates to take the Program for the Assessment of Veterinary Education Equivalence (PAVE). Emergency rules will be enacted to make these two changes. These changes will make the emergency rules permanent to align with the NBVME contract and statutory changes related to PAVE.

Policy Analysis

The current deadlines for applicants to take the NAVLE conflict with the contract the Department of Regulation and Licensing signed with NBVME. Although these changes require the applicants to submit paperwork earlier than currently required, it is necessary to comply with the contract and to ensure that all applicants will be permitted to take the examination on their chosen date. The flexibility built in to the new timelines should allow compliance with the current and future NBVME contracts.

Additionally, the Wisconsin statutes allow foreign veterinary graduates to take the PAVE. Our rules should be consistent with the statutes.

Statutory Authority

Section 453.03 (1), Stats.

Comparison with Federal Regulations

There is no current or proposed federal legislation that will address the issues addressed by the proposed rule changes.

Entities Affected by the Rule

Candidates for the NAVLE as well as foreign veterinary graduates who are candidates for PAVE.

Estimate of Time Needed to Develop the Rule

75 hours.

Transportation**Subject**

Revises Chapter Trans 405, relating to siting noise barriers.

Objective of the Rule

The proposed revisions to ch. Trans 405 (Siting Noise Barriers) will bring Trans 405 into compliance with 23 CFR 772.

Per legislative mandate, the Department promulgated Trans 405 on 09/01/1989. On 06/12/1995, the FHWA issued a memo requiring each State Highway Agency to develop its own written noise policy using 23 CFR 772 as guidance. WisDOT requested that Trans 405 be accepted as our written noise policy on 08/18/1995 and this request was approved by FHWA on 02/29/1996.

No changes to Trans 405 have occurred since the rule was promulgated on 09/01/1989.

Changes to 23 CFR 772 were promulgated on 07/13/2010 (75 Federal Register 39820, July 13, 2010). Those changes require that changes be made to Trans 405 to bring the rule into compliance with 23 CFR 772 (23 CFR 772.7(b)).

Policy Analysis

Modifications to Trans 405 are required to bring the rule into compliance with 23 CFR 772. It is proposed to add several definitions, modify land use category descriptions and redefine local citizen and governmental participation requirements for determining whether or not barrier construction is desired by the public. Compliance with federal standards is required as a condition of receiving federal funds on certain projects (23 CFR 772.7). Alternatives to compliance may result in lost federal money for certain highway projects.

Statutory Authority

Section 3052 (3g) (b), 1987 Wis. Act 27; Section 84.015 (1), Wis. Stats.

Comparison with Federal Regulations

Proposed revisions to ch. Trans 405 (Siting Noise Barriers) will bring Trans 405 into compliance with 23 CFR 772.

Entities Affected by the Rule

The public and local units of government.

Estimate of Time Needed to Develop the Rule

250 hours.

Submittal of Rules to Legislative Council Clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Commerce

*Financial Resources for Businesses and Communities,
Ch. Comm 100 —
CR 11-009*

On February 16, 2011, the Department of Commerce submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules create Chapter Comm 102, relating to the Wisconsin Enterprise Zone Program.

Agency Procedure for Promulgation

A public hearing will be held March 25, 2011. The Department's Division of Business Development is responsible for promulgation of the proposed rule.

Contact Information

Sam Rockweiler, Code Development Consultant
Phone: (608) 266-0797
Email: sam.rockweiler@wisconsin.gov

Commerce

*Financial Resources for Businesses and Communities,
Ch. Comm 100 —
CR 11-010*

On February 16, 2011, the Department of Commerce submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules revising Chapter Comm 138, relating to the woody biomass harvesting and processing credit.

Agency Procedure for Promulgation

A public hearing will be held March 25, 2011. The Department's Division of Business Development is responsible for promulgation of the proposed rule.

Contact Information

Sam Rockweiler, Code Development Consultant
Phone: (608) 266-0797
Email: sam.rockweiler@wisconsin.gov

Commerce

*Financial Resources for Businesses and Communities,
Ch. Comm 100 —
CR 11-012*

On February 28, 2011, the Department of Commerce submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules create Chapter Comm 101, relating to tax credits for jobs and training.

Agency Procedure for Promulgation

A public hearing will be held March 29, 2011. The Department's Division of Business Development is responsible for promulgation of the proposed rule.

Contact Information

Sam Rockweiler, Code Development Consultant
Phone: (608) 266-0797
Email: sam.rockweiler@wisconsin.gov

Regulation and Licensing —

**Barbering and Cosmetology Examining Board
CR 11-011**

On February 25, 2011, the Barbering and Cosmetology Examining Board submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules revise Chapters BC 9 and 11, relating to license renewal and continuing education.

Agency Procedure for Promulgation

A public hearing is required and will be held April 4, 2011.

Contact Information

Kris Anderson, Paralegal
Department of Regulation and Licensing, Division of
Board Services
Phone: (608) 261-2385
Email: Kristine.Anderson@wisconsin.gov

Rule–Making Notices

Notice of Hearing

Commerce

*Financial Resources for Businesses and Communities,
Chs. Comm 100 —
CR 11–009*

NOTICE IS HEREBY GIVEN that pursuant to section 560.799 (6) (g) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in Chapter Comm 102 relating to the Wisconsin Enterprise Zone Program, and affecting small businesses.

Hearing Information

The hearing will be held on:

<u>Date and Time</u>	<u>Location</u>
March 25, 2011 Friday at 1:00 PM	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison, WI 53703

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Copies of Proposed Rules

The proposed rules and an analysis of the rules are available by entering “Comm 102” in the search engine at the following Web site: <https://health.wisconsin.gov/admrules/public/Homesam.rockweiler@wisconsin.gov>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at mail to: sam.rockweiler@wisconsin.gov, or at telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public hearing.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **March 30, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to sam.rockweiler@wisconsin.gov. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Analysis Prepared by Department of Commerce

Statute(s) interpreted

Section 560.799.

Statutory authority

Sections 227.11 (2) (a) and 560.799 (1) (am) 2. and (6) (g).

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 560.799 (1) (am) 2. authorizes the Department to promulgate rules specifying circumstances under which “full–time employee” includes individuals who work fewer than 2,080 hours per year. Section 560.799 (6) (g) requires the Department to promulgate by rule definitions for tier I and tier II counties and municipalities, original equipment manufacturers with significant supply chains in Wisconsin, and significant capital expenditures.

Related statute or rule

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin, but those rules do not include the proposed definitions for tier I and tier II counties and municipalities, and for original equipment manufacturers with significant supply chains in Wisconsin. Chapter Comm 100 defines “full–time job” in a manner similar to the proposed definition of “full–time employee,” and defines “significant investment of capital” in a manner similar to the proposed definition of “significant capital expenditures.”

Plain language analysis

The rules in this order consist of definitions for (1) full–time employees, (2) tier I and tier II counties and municipalities, (3) original equipment manufacturers with significant supply chains in Wisconsin and (4) significant capital expenditures.

Comparison with existing or proposed federal regulations

In researching federal tax incentives, the Department did not find any tax credits at the federal level that are exactly like the enterprise zone tax credit in sections 71.07 (3w), 71.28 (3w), 71.47 (3w) and 560.799 of the Statutes. The following federal tax credit may apply to some of the activities that may be addressed by the proposed rules, but this federal tax credit is structured differently than the credit in these sections of the Statutes.

Job creation that would be eligible for tax credits under the proposed rules may 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.

Comparison with similar 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.

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.

Summary of factual data and analytical methodologies

The data and methodology for developing these rules were derived from and consisted of (1) implementing the changes to section 560.799 of the Statutes that were enacted in 2009 Wisconsin Acts 11 and 28; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax–credit verification.

Analysis and supporting documents used to determine the effect on small business

The primary documents that were used to determine the effect of the rules on small business were 2009 Wisconsin Acts 11 and 28. These Acts apply their private–sector requirements only to businesses for which a corresponding tax credit is desired.

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 enterprise zones.

Initial regulatory flexibility analysis

Types of small businesses that will be affected by the rules.

These rules may affect any business that elects to pursue tax credits under section 560.799 of the Statutes for qualifying activities in an enterprise zone designated by the Department. The qualifying activities include beginning or expanding operations in, relocating to, or making significant capital expenditures in the zone.

Reporting, bookkeeping and other procedures required for compliance with the rules.

No new reporting, bookkeeping and other procedures would be required.

Types of professional skills necessary for compliance with the rules.

No new professional skills are necessary for compliance with the rules.

Rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Environmental Impact

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate**Assumptions used in arriving at fiscal estimate**

The rules are not expected to have any significant fiscal effect on the Department because they are not expected to result in any substantial increase or decrease in workload.

The rules are not expected to impose any significant costs on the private sector because the rules only create definitions for applicants that choose to pursue tax credits for beginning or expanding operations in, relocating to, or making significant capital expenditures in designated enterprise zones.

State fiscal effect

None.

Local fiscal effect

None.

Long–range fiscal implications

None known.

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@wisconsin.gov.

Notice of Hearing

Commerce

***Financial Resources for Businesses and Communities,
Chs. Comm 100—
CR 11–010***

NOTICE IS HEREBY GIVEN that pursuant to section 560.209 (4) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in Chapter Comm 138 relating to investment tax credits for harvesting or processing woody biomass, and affecting small businesses.

Hearing Information

The hearing will be held on:

March 25, 2011	Thompson Commerce Center
Friday	Third Floor, Room #B
at 10:00 a.m.	201 W. Washington Avenue
	Madison, WI 53703

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Copies of Proposed Rule

The proposed rules and an analysis of the rules are available by entering “Comm 138” in the search engine at the following Web site: <https://health.wisconsin.gov/admrules/public/Home>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wisconsin.gov, or at telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public Hearing.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **March 30, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to sam.rockweiler@wisconsin.gov. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Analysis Prepared by the Department of Commerce

Statute(s) interpreted

Sections 71.07 (3rm), 71.28 (3rm), 71.47 (3rm) and 560.209 – as created in 2009 Wisconsin Act 269.

Statutory authority

Sections 227.11 (2) (a) and 560.209 (4).

Explanation of agency authority

Section 560.209 (4) of the Statutes requires the Department to promulgate rules for administering a program to certify applicants and allocate to them tax credits for the woody biomass 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.

Related statute or rule

The Department has rules for several other programs associated with tax credits, but those programs are not targeted specifically to harvesting or processing woody biomass.

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 woody biomass 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.

Plain language analysis

Comparison with existing or proposed federal regulations

The 2008 Food, Conservation and Energy Act, P.L. 110–234, included a new, temporary tax credit that is available to qualified cellulosic biofuel producers, some of whom may process woody biomass into a material that is used to produce the biofuel. The credit is \$1.01 per gallon and is available through December 31, 2012.

Comparison with similar rules in adjacent states

Minnesota, Illinois and Iowa have various tax–credit programs, but they were not found to specifically include the woody biomass investment credit addressed in these rules. Michigan was likewise not found to have any similar rules – but its Department of Energy, Labor and Economic Growth administers a Biomass Energy Program that awards grants to

universities and public and non-profit organizations for projects which will expand markets for energy and fuel derived from biomass resources, such as woody biomass, or will increase biofuels and bioenergy production and production efficiency in the state.

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 269; (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 using input from the Department of Revenue; and (4) reviewing Internet-based sources of related federal, state and private-sector information.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 269. This Act requires the Department to implement a program to certify taxpayers as eligible for the woody biomass investment credit under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, and requires the Department to promulgate rules for administering the program. This Act applies its private-sector requirements only to purchasers of woody biomass equipment for which a corresponding tax credit is desired.

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 purchasing equipment which is utilized primarily to harvest or process woody biomass for use as a fuel or as a component of fuel.

Initial regulatory flexibility analysis

Types of small businesses that will be affected by the rules.

Businesses that choose to pursue the tax credits in sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes for purchasing equipment that is utilized primarily to harvest or process woody biomass for use as a fuel or as a component of fuel.

Reporting, bookkeeping and other procedures required for compliance with the rules.

An application form prescribed by the Department must be completed and submitted to the Department.

Types of professional skills necessary for compliance with the rules.

No new professional skills are necessary for compliance with the rules.

Rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Environmental Impact

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In

accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

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 equipment for harvesting or processing woody biomass, 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 equipment for harvesting or processing woody biomass.

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None known.

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@wisconsin.gov.

Notice of Hearing Commerce

Financial Resources for Businesses and Communities, Chs. Comm 100— CR 11-012

NOTICE IS HEREBY GIVEN that pursuant to section 560.2055 of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in Chapter Comm 101 relating to tax credits for jobs and training, and affecting small businesses.

Hearing Information

The hearing will be held on:

March 29, 2011 Thompson Commerce Center
Tuesday Third Floor, Room #B
at 10:00 a.m. 201 W. Washington Avenue
Madison, WI 53703

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or

materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Copies of Proposed Rule

The proposed rules and an analysis of the rules are available by entering “Comm 101” in the search engine at the following Web site: <https://health.wisconsin.gov/admrules/public/Home>. Paper copies may be obtained without cost from Sam Rockweiler at the Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53707, or at sam.rockweiler@wisconsin.gov, or at telephone (608) 266–0797, or at Contact Through Relay. Copies will also be available at the public Hearing.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **April 4, 2011**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to sam.rockweiler@wisconsin.gov. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

Analysis Prepared by the Department of Commerce

Statute(s) interpreted

Section 560.2055.

Statutory authority

Sections 227.11 (2) (a) and 560.2055 (5) (f).

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 560.2055 (5) (f) requires the Department to promulgate rules for implementing and operating section 560.2055, including rules that (1) define tier I and tier II counties and municipalities, (2) establish a schedule of the tax credits that can be claimed for costs incurred to undertake training, (3) establish conditions for revoking a certification of eligibility for tax credits and (4) establish conditions for repayment of the tax credits.

Related statute or rule

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin, but those rules do not include the proposed definitions for tier I and tier II counties and municipalities, and do not specifically include the proposed rule text for earning refundable business tax credits by increasing net employment that either has an annual salary of \$20,000 to \$100,000 or is accompanied with employee training. Chapter Comm 100 defines “full–time job” in a manner similar to the proposed definition.

Plain language analysis

The rules in this order include (1) definitions for tier I and tier II counties and municipalities; (2) the eligibility requirements for applicants; (3) the documentation that must be submitted by applicants to become certified as eligible for tax credits for jobs and training, 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.

Comparison with existing or proposed federal regulations

In researching federal tax incentives, the Department did not find any tax credits at the federal level that are exactly like the jobs tax credit in sections 71.07 (3q), 71.28 (3q), 71.47 (3q) and 560.2055 of the Statutes. The following federal tax credit may apply to some of the activities that may be addressed by the proposed rules, but this federal tax credit is structured differently than the credit in these sections of the Statutes.

Job creation that would be eligible for tax credits under the proposed rules may 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.

Comparison with similar 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.

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 tax credit for jobs and training.

Iowa:

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.

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 section 560.2055 of the Statutes, which were enacted in 2009 Wisconsin Act 28; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification.

Analysis and supporting documents used to determine effect on small business

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 28. This Act applies its private-sector requirements only to businesses for which a corresponding tax credit is desired.

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 jobs and training.

Initial regulatory flexibility analysis

Types of small businesses that will be affected by the rules.

These rules may affect any business that elects to pursue tax credits under section 560.2055 of the Statutes for increasing net employment that either has an annual salary of \$20,000 to \$100,000 or is accompanied with employee training.

Reporting, bookkeeping and other procedures required for compliance with the rules.

A business certified under the rules must enter into a written contract with the Department that establishes the responsibilities which the business will fulfill with regard to the Department's terms and conditions in allocating a tax credit, such as submitting an annual project report to the Department.

Types of professional skills necessary for compliance with the rules.

No new professional skills are necessary for compliance with the rules.

Rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler, as listed above.

Environmental Impact

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

The rules are not expected to have any significant fiscal effect on the Department because they are not expected to result in any substantial increase in workload.

The rules are not expected to impose any significant costs on the private sector because the rules would only affect businesses that choose to pursue tax credits under section 560.2055 of the Statutes for increasing net employment which either has an annual salary of \$20,000 to \$100,000 or is accompanied with employee training.

State fiscal effect

None.

Local government fiscal effect

None.

Long-range fiscal implications

None known.

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@wisconsin.gov.

**Notice of Hearing
Regulation and Licensing —**

**Barbering and Cosmetology Examining Board
EmR1047, CR 11-011**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 (2) and 440.04, Stats., and interpreting s. 440.03, Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an emergency rule and an order adopting permanent rules to amend section BC 9.02; and to repeal and create Chapter BC 11, relating to late renewal and continuing education.

Hearing Information

The hearing will be held on:

April 4, 2011 Room 121AB
 Monday 1400 E. Washington Avenue
 at 10:00 a.m. Madison, WI 53703

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Kris Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at Kristine1.Anderson@wisconsin.gov.

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Division of Board Services, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **April 4, 2011**, to be included in the record of rule-making proceedings.

Submittal of Written Comments

Comments may be submitted to Kristine Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, WI 53708–8935, or by email to kristine1.anderson@wisconsin.gov. Comments must be received on or before **April 4, 2011** to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statute(s) interpreted

Section 454.12, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 454.12, Stats.

Explanation of agency authority

The Barbering and Cosmetology Examining Board is granted the authority under s. 454.12, Stats., to promulgate rules that establish continuing education requirements for licensure. Prior to promulgation of this emergency rule, the board made the determination that this rule-making was necessary to preserve the public health, safety or welfare.

Plain language analysis

This proposed rule-making modifies continuing education requirements for licensure. It also modifies the criteria for the approval of continuing education programs and the types of programs required to be taken for license renewal.

SECTION 1 sets out the maximum number of credits that must be completed for late renewal applicants whose license has not been expired greater than 5 years. The requirements for late renewal is clarified to reflect that if the total number of delinquent continuing education credits exceed 30, then 30 shall be the maximum required for late renewal.

SECTION 2 repeals and recreates ch. BC 11. Section BC 11.01 identifies the authority and purpose for ch. BC 11, Continuing Education. Section BC 11.02 provides definitions for “biennium,” “continuing education,” “continuing

education credit” or “CEU,” “course” or “program,” and “safety, sanitation and infection control.”

Section BC 11.03 provides the continuing education requirements for license renewal. This section clarifies the requirement that applicants for renewal licenses must have obtained a minimum of 12 credits of continuing education during the 2–year period immediately preceding the license renewal date. A licensee must continue to obtain the following types and number of credit hours: 2 credit hours reviewing the laws governing their profession; 4 credit hours in safety, sanitation and infection control, and 6 elective credit hours. However, in addition to credits directly related to the provision of services allowed under the applicant’s license, credit may also be had for courses related to identifying and reporting domestic abuse. It also clarifies that applicable licensees must complete 6 elective credits for each license held. A Note is added to explain that courses may count under more than one license, and that licensees may be granted credit for business management class.

Section BC 11.04 creates standards for approval of programs and courses. The rule specifies the criteria necessary for a course to meet requirements for approval which include: programs organized and structured to contribute to licensee’s professional competency; a program conducted by individuals or entities that have specialized education, training or experience and are considered qualified concerning the subject matter of the program; a program that fulfills pre-established goals and objectives and provides attendance or completion verification records.

Additional provisions designate universities, technical colleges, state licensed schools, the Wisconsin Barbering and Cosmetology Examining Board, the Department of Regulation and Licensing, and state or national professional organizations recognized by the board as approved providers who will not need prior approval of its programs. Other entities may become approved providers upon application on prescribed department forms and approval. All providers will have to have their law course approved by the department, and may have their approvals revoked at the discretion of the board.

Section BC 11.05 requires certificates of completion or proof of attendance that must be retained and submitted to the department upon request for audit purposes. Section BC 11.06 outlines the requirement that completion certificates be retained for a minimum of five years.

Section BC 11.07 specifies the waiver provisions. It limits waivers to licensees who are actively practicing in the profession and are temporarily unable to comply with the continuing education requirements. The board will have the discretion of granting a full or partial waiver, or granting an extension of time to the applicant. It spells out that applicants must make a written request for waiver and pay the renewal fee prior to the expiration of their license. It further provides that a licensee may not receive a waiver, partial waiver or extension for two consecutive biennium. Lastly, the provision outlines that if a waiver is denied, the licensee may not practice, or must cease practicing, until he or she comes into compliance.

Comparison with existing or proposed federal regulations

There is no existing or proposed federal regulation.

Comparison with similar rules in adjacent states

Illinois:

Continuing education requirements are as follows: Ten hours are required for estheticians, 14 hours for cosmetologists, and 10 hours for nail technicians for each biennial renewal. There are no requirements for barbers.

Iowa:

Continuing education requirements are 8 hours each for barbers, cosmetologists, nail technicians, and estheticians. www.idph.state.ia.us.

Michigan:

There are no continuing education requirements for barbering or cosmetology. www.michigan.gov/dleg.

Minnesota:

Cosmetologists, manicurists, and estheticians must provide documentation that they have practiced for a certain amount of hours in the previous 3 year period or have taken an approved 40 hour refresher course. This requirement does not exist for barbers. These professions do not have continuing education requirements. www.bceboard.state.mn.us.

Summary of factual data and analytical methodologies

The comparison information with the rules in adjacent states was obtained directly from contact with those states and a review of their rules. The comparison to the adjacent states demonstrates that the proposed rules are substantially consistent with the rules in those states. In addition, the Barbering and Cosmetology Examining Board examined models of continuing education from national organizations related to their profession, as well as from other Wisconsin regulatory boards.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact report

Internet research, as well as telephone surveys were conducted regarding the availability and costs related to continuing education in the cosmetology profession. Continuing education credits are available at an average cost

range of \$10–\$25 per credit hour, and are available in a wide array of modes (online, video correspondence, workshops, etc.). That data was compared with the requirements outlined in the proposed rules and based thereon, appears that while individual licensees will see a slight increase in the cost associated with doing business as a result of these rules, the rules will have no significant impact on a substantial number of small businesses.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Effect on Small Business

These proposed rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at john.murray@wisconsin.gov, or by calling (608) 266–8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Division of Enforcement, Division of Management Services, and the Office of Exams. The total one–time salary and fringe costs are estimated at \$26,172. The total on–going salary and fringe costs are estimated at \$40,228.

Private sector fiscal effect

The department finds that this rule has no significant fiscal effect on the private sector.

Agency Contact Person

Kristine Anderson, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 E. Washington Ave., Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–2385; email at kristine1.anderson@wisconsin.gov.

Notice of Suspension of an Administrative Rule

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 1, 2011 and adopted the following motion:

- Moved by Senator Grothman, seconded by Sen. Vukmir that the Joint Committee for Review of Administrative Rules suspend Ch. PSC 128, pursuant to s. 227.26 (2) (d), Stats., effective March 1, 2011, on the basis of testimony received at its February 9, 2011 meeting, and on the grounds that the contents of Ch. PSC 128 create an emergency relating to public health, safety, or welfare; are arbitrary and capricious; and impose an undue hardship on landowners and residents adjacent to wind turbine sites as stated in s. 227.19 (4) (d) 2 and 6.

Motion carried: 6 Ayes, 2 Noes, 2 Absent

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