

The Wisconsin Department of Commerce proposes an order to: create ch. Comm 107 relating to the Wisconsin Technology Zone Program.

Analysis of Proposed Rules

Statutory authority: ss. 560.96 and 560.96 (5), Stats.
Statutes interpreted: s. 560.96, Stats.

Under s. 560.96 (5), Stats., the Department of Commerce has the responsibility of promulgating rules for the operation of the Wisconsin Technology Zone Program.

This rule is being created in response to 2001 Wisc. Act 16, which provides authority for administering such a program, the designation of 8 technology zones, certification of high technology businesses, and the tax benefits available.

The following listing highlights the major items contained in this new chapter:

- Creates the process for application and designation of the 8 technology zones.
- Provides a means for modification of the boundary of a technology zone.
- Creates the process for application and certification of high tech businesses.
- Establishes criteria for eligibility to certify high tech business.
- Creates the process to determine and claim tax benefits and notify the Department of Revenue.

SECTION 1. Chapter Comm 107 is created to read:

Chapter Comm 107

WISCONSIN TECHNOLOGY ZONE PROGRAM

Comm 107.01 Purpose, scope and authority.

Comm 107.02 Definitions.

Subchapter I—Technology Zones

Comm 107.10 Application, evaluation and designation.

Comm 107.11 Modification of boundaries.

Subchapter II—Certified Business

Comm 107.20 Eligibility for application for business certification.

Comm 107.21 Application and determination.

Comm 107.22 Extension.

Comm 107.23 Revocation.

Subchapter III—Tax Benefits

Comm 107.30 Eligibility.

Comm 107.31 Modification.

Comm 107.32 Claims.

Subchapter IV - Records

Comm 107.40 Documentation and records.

Comm 107.01 Purpose, scope and authority. (1) **PURPOSE AND SCOPE.** The purpose of this chapter is to establish a procedure for the administration of the Wisconsin technology zone program. The provisions of this chapter shall apply to designating technology zones and certifying high-technology businesses eligible for tax credits for the attraction, promotion and expansion of high technology in the state.

(2) **AUTHORITY.** This chapter relates to the Wisconsin technology zone program promulgated pursuant to ss. 560.02 (4) and 560.96, Stats.

Comm 107.02 Definitions. In this chapter:

(1) “Certified business” means a person that conducts economic activity in a technology zone and has been certified as eligible for tax benefits by the department under subch. II.

(2) “Department” means the department of commerce.

(3) “Eligible applicant” means the governing body of one or more cities, villages, towns or counties, or the elected governing body of a federally recognized American Indian tribe or band in the state of Wisconsin.

(4) “Expanding business” means a person that is making a capital investment such as expansion of existing facilities, construction of new facilities or purchase of new equipment, or is retaining, creating or significantly upgrading jobs.

(5) “High-technology business” means either of the following:

(a) A person engaged in the activities of research, development or manufacture of advanced products or materials for use in factory automation, biotechnology, chemicals, computer hardware, computer software, defense, energy, environmental, manufacturing equipment, medical, pharmaceuticals, photonics, subassemblies and components, test and measurement, telecommunications and transportation.

(b) A person that is identified by the technology zone contact as part of a target cluster and is a knowledge-based business or a business that utilizes advanced technology production processes, systems or equipment.

Note: Knowledge-based businesses possess some, if not all, of the following attributes: highly skilled/highly educated workforce, high level of research and development activities, strong export orientation, high percentage of intangible assets, and products/materials with short life expectations and high gross margins. In addition, knowledge-based businesses are considered more likely to use and/or develop advanced technologies and be innovative in their products, services or processes.

(6) “New business” means a person that has been in operation for less than one year prior to the date of application for business certification under subch. II and be eligible for tax benefits under subch. III.

(7) “Person” means a natural person, estate, trust, partnership, corporation, tax-option corporation, insurance company, or trade and business entity of Native Americans or tribes on reservation property or on property held in tribal trust.

(8) “Tax benefit” means a tax credit under s. 560.96 (1), Stats.

(9) “Technology zone” means an area designated by the department consistent with the technology zone program as authorized under s. 560.96, Stats.

(10) “Wisconsin technology zone program” means the program administered under the scope of this chapter.

Subchapter I—Technology Zones

Comm 107.10 Application, evaluation and designation. (1) GENERAL. (a) As specified under s. 560.96 (2) (a), Stats., the department may designate up to 8 areas in the state as technology zones. The designation shall be in effect for 10 years from the time the department initially designates an area as a technology zone.

(b) The department may not designate a technology zone that includes an area designated as an agricultural development zone under s. 560.798, Stats.

(2) APPLICATION. Applications for designation as a technology zone from eligible applicants shall be submitted to the department.

Note: The processes involved in the receipt and evaluation of applications for and designation of the technology zones are expected to be completed prior to the end of the state fiscal year 2002, (June 30, 2002).

(3) APPLICATION CONTENT. Each application for designation as a technology zone shall contain all of the following:

(a) The name, address, phone number and designated contact person of the eligible applicant.

(b) A map outlining the specific area where technology development is likely to occur.

(c) A detailed description of principal technology development-supporting efforts and activities including, but not limited to:

1. Networking and clustering of high-technology business.

2. Existing or planned technology parks and incubators in the proposed designated technology zone and immediate vicinity of the technology zone.

3. Venture financing available to high-technology business.

4. Workforce development available to high-technology business.

5. Any additional incentives being made available by the eligible applicant to high-technology business located or planning to locate in the technology zone.

6. Mechanisms to facilitate technology transfer.

7. Technical infrastructure and stable traditional infrastructure available to high-technology business.

8. Available supplier network to high-technology business.

9. Any other information as requested by the department.

(d) The eligible applicant's comprehensive plan or strategy developed for the attraction, promotion and expansion of high-technology business.

(e) Any local criteria and guidelines for certification of high-technology business.

(4) EVALUATION. (a) The department shall evaluate applications submitted by an eligible applicant based on the local capacity and organization of the area as it relates to the attraction, promotion and expansion of high-technology business.

(b) The department may consider regional cooperation and geographical distribution when evaluating applications.

(5) NOTIFICATION OF DESIGNATION. The department shall provide written notification of designation as a technology zone. The date of such notification shall be the beginning date of the technology zone duration as specified under sub. (1).

(6) TAX BENEFITS. As specified under s. 560.96 (2) (b), Stats., not more than \$5,000,000 of tax benefits may be claimed in each technology zone for the duration.

Comm 107.11 Modification of boundaries. (1) A boundary of a technology zone may be modified by the department upon review of additional information submitted by the technology zone contact since the date of notification.

(2) The modification of a technology zone boundary shall have no effect on the technology zone duration specified under s. Comm 108.10 (1).

Subchapter II—Certified Business

Comm 107.20 Eligibility for application for business certification. (1) GENERAL. As provided under s. 560.96, Stats., the department may certify persons for tax benefits available under this chapter.

(2) CRITERIA FOR ELIGIBILITY FOR APPLICATION. A person located in or planning to be located in a technology zone shall submit an application to the department as specified under s. Comm 107.21. A person shall meet all of the following:

- (a) The person's business is new or expanding.
- (b) The person's business is a high-technology business.
- (c) The technology zone contact recommends the person's business for certification.

Comm 107.21 Application and determination. (1) SUBMITTAL. A person who meets the provisions specified under s. Comm 107.20 (2) shall submit an application to the department which includes at least all of the following:

- (a) The name, address and phone number of the person's high-technology business and a designated contact person.
- (b) The appropriate Wisconsin tax identification number of the person.
- (c) The names and addresses of other locations outside the technology zone where the person conducts business and a description of the business activities conducted at those locations.
- (d) The estimated total investment of the person's business in the technology zone.
- (e) The estimated number of full-time jobs that will be created, retained or significantly upgraded in the technology zone because of the person's high-technology business.

- (f) The extent and nature of the high technology used or produced by the business.
- (g) Historical and projected financial information.
- (h) Documentation supporting sales, property and income tax projections.
- (i) Other information as required by the department or the technology zone contact.

(2) TAX BENEFIT DETERMINATION. The department shall consider all of the following to establish a tax benefit limit:

- (a) The prospects for the project to attract related high-technology business to the area.
- (b) The extent and nature of the high technology used or produced by the business.
- (c) The amount of private investment that is likely to result from the project.

(d) The number and quality of jobs that are likely to be retained, created or upgraded as a result of the project.

(e) The competitive effect of the tax benefits on other businesses in the area.

(f) Whether the project is likely to occur or continue without allocation of the tax benefits available under this chapter.

(g) The financial soundness of the high-technology business.

(h) The baseline goals of the person's high-technology business.

(i) Any other factors that the department may consider relevant.

(3) NOTIFICATION. (a) For a person located in a technology zone. If the department determines that the person is eligible to be certified for tax benefits under the standards as provided in sub. (2), the department shall notify the person of its certification in the technology zone and enter into an agreement specified under s. 560.96 (3) (d), Stats.

(b) A person planning to be located in a technology zone. In order to be eligible to be certified for tax benefits under the standards as provided in sub. (2), the person's business shall be located in a technology zone. When the business is located in a technology zone, the department shall notify the person of its certification in the technology zone and enter into an agreement specified under s. 560.96 (3) (d), Stats.

(4) CERTIFICATION DISALLOWED IN CERTAIN CASES. No person may be certified under s. 560.96, Stats., if the proposed new business, expansion of an existing business or other proposed economic activity in a technology zone would do either of the following:

(a) Result in the direct loss of full-time jobs at another of the person's business locations in this state but located outside the technology zone.

(b) Likely result in the direct transfer of employees from a business location in this state to a business location in the technology zone, unless it is determined by the department that the total number of full-time jobs provided by the person in this state would be reduced if the person were not certified under s. 560.96, Stats., or if the situation is extraordinary.

Comm 107.22 Extension. (1) After a person has been certified for three consecutive years, the department may extend certification for one additional two-year extension specified under s. 560.96 (5) (e), Stats.

(2) The extension of certification shall be based on at least one of the following:

(a) Additional significant job creation.

(b) Additional significant capital investment.

(3) The department may not extend certification under this section unless the certified business has met or exceeded the baseline goals as set forth in its original certification.

Comm 107.23 Revocation. (1) The department shall revoke the certification of a person's high-technology business certified under s 560.96, Stats., for either of the following circumstances:

(a) Submittal of false or misleading information in order to obtain certification under this chapter.

(b) Cessation of operations as a high-technology business within the technology zone.

(2) After certification has been revoked, the department shall so notify the department of revenue.

Subchapter III—Tax Benefits

Comm 107.30 Eligibility. (1) GENERAL. The actual amount of tax benefit that a person may be eligible to claim shall be determined by the department in accordance with subch. II.

Comm 107.31 Modification. (1) INCREASE TAX BENEFITS. The department may, on the request of a certified business and on the recommendation of the technology zone contact, increase the limit of tax benefits established for the certified business, if the department does all of the following:

(a) Considers the tax credit benefits awarded to all certified businesses in a technology zone such that not more than \$5,000,000 in tax credits may be claimed in a technology zone.

(b) Revises the certification and provides a copy of the revised form to the department of revenue and to the certified business.

(2) DECREASE TAX BENEFITS. (a) The department may reduce the limit of tax benefits as established under s. Comm 107.30 or sub. (1) if the department determines that the information on which the limit is based was inaccurate or significantly misestimated.

(b) The department shall revise the certification and provide a copy of the revised form to the department of revenue and to the certified business.

Comm 107.32 Claims. (1) A certified business may file for tax benefits using forms acceptable to the department of revenue. Technology zone tax benefit claims shall include at least all of the following:

- (a) A copy of the certification issued by the department.
- (b) A copy of a statement from the department verifying the tax benefit claim under sub. (3).
- (c) The state employer tax identification number.
- (d) The North American Industry Classification System code (NAICS) for that business.

Note: For additional information on NAICS, refer to U.S. Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503; phone (202) 395-3093; fax (202) 395-7245.

(e) Any forms required by the department of revenue.

(2) Prior to filing for tax benefits under sub. (1), a certified business shall complete and file with the department an annual project report supporting the tax benefit claim to the department on a form prescribed by the department. The annual project report shall include all of the following:

(a) The information required under ss. 71.07 (3g), 71.28 (3g) and 71.47 (3g), Stats.

(b) The status of the certified business' project including, without limitation, the number of jobs created, retained or significantly upgraded, the total amount invested and other information relating to the tax benefits claimed by the certified business.

(c) Documentation of sales, property and income tax projections.

(d) Any other information as requested by the department.

(3) (a) The department shall verify the tax benefit claim. The department may request additional information from the certified business to support the claim.

(b) No person may file for tax benefits under this chapter without the written approval of the department.

Subchapter IV - Records

Comm 107.40 Documentation and records. Certain documents, records, information, and other materials submitted with an application under this chapter may not be subject to disclosure and may be removed or separated from records that may be disclosed under s. 19.36 (6), Stats.

(1) Trade secret information shall not be subject to disclosure under s. 19.36 (5), Stats.

(2) Tax documents shall not be subject to disclosure under s. 71.78, Stats.

(3) Social security and federal employer identification numbers shall not subject to disclosure under 5 USC 552a and other applicable federal law.

(4) Private financial information shall not be subject to disclosure as determined in a balancing test by the legal custodian of the department.

Note: Any forms referred to in this chapter are available without a fee on request from the Department of Commerce, Bureau of Enterprise Development, 201 W. Washington Avenue, P.O. Box 7970, Madison, WI 53707-7970; phone (608) 266-7123; fax (608) 266-8969; or on the Commerce webpage at <http://www.commerce.state.wi.us/CD/CD-bed.html>.

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the first month following publication in the Wisconsin Administrative Register.

(end)