

The Wisconsin Department of Commerce proposes an order to: create ch. 118 relating to the Agricultural Development Zone Program.

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**Analysis of Proposed Rules**

**Statutory authority:** s. 560.798, Stats.

**Statutes interpreted:** s. 560.798, Stats.

Under s. 560.798 (5), Stats., the Department of Commerce has the responsibility of promulgating rules for the operation of the Agricultural Development 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 an agricultural development zone, the certification of agricultural businesses, and the determination of tax benefits available to certified agricultural businesses.

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

- Creates the process for application and designation of the Agricultural development zone.
- Provides a means for modification of the boundary of an agricultural development zone.
- Creates the process for application and certification of agri-businesses.
- Establishes criteria for eligibility to certify agri-business.
- Creates the process to determine and claim tax benefits and notifications to the Department of Revenue.

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SECTION 1. Chapter Comm 118 is created to read:

**Chapter Comm 118**

**AGRICULTURAL DEVELOPMENT ZONE PROGRAM**

**Subchapter I—Purpose, scope and authority**

Comm 118.01 Purpose, scope and authority.  
Comm 118.02 Definitions.

Comm 118.20 Eligibility for application for business certification.  
Comm 118.21 Application and determination.  
Comm 118.22 Extension.  
Comm 118.23 Revocation.

**Subchapter II—Agricultural Development Zone**

Comm 118.10 Application, evaluation and designation.  
Comm 118.11 Modification of boundaries.

**Subchapter IV—Tax Benefits**

Comm 118.30 Eligibility.  
Comm 118.31 Modification.  
Comm 118.32 Claims.

**Subchapter III—Certified Business**

**Subchapter V - Records**

Comm 118.40 Documentation and records.

**Subchapter I—Purpose, scope and authority**

**Comm 118.01 Purpose, scope and authority.** (1) **PURPOSE AND SCOPE.** The purpose of this chapter is to establish a procedure for the administration and operation of the agricultural development zone program. The provisions of this chapter shall apply to designating an agricultural development zone and certifying agricultural businesses eligible for tax credits for the attraction, promotion, retention and expansion of agricultural business in the state.

(2) **AUTHORITY.** This chapter is promulgated under the authority of s. 560.798, Stats., relating to the agricultural development zone program.

**Comm 118.02 Definitions.** In this chapter:

(1) “Agricultural business” means a business that is part of an agricultural business, food-processing cluster. Such an agricultural business, food-processing cluster includes, but is not limited to, the growing of foods and the processing of agricultural products. Agricultural business includes all of the activities or operations that are involved in the growth, production, processing, manufacturing, distribution, and wholesale and retail sales of agricultural and food products.

(2) “Agricultural development zone” means an area designated by the department consistent with the agricultural development zone program as authorized under s. 560.798, Stats.

(3) “Agricultural development zone program” means the program administered under the scope of this chapter as provided in s. 560.798, Stats.

(4) “Area” means a geographic region that is located within a rural municipality, which may contain entire counties or portions of counties, and is under the jurisdiction of an eligible applicant.

(5) “Certified business” means a person that conducts an agricultural business-related economic activity in an agricultural development zone and has been certified as eligible for tax benefits by the department under subch. III.

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

(7) “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. An eligible applicant shall either be or have within its legal boundaries a rural municipality as defined in sub. (12).

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

(9) “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. III and is eligible for tax benefits under subch. IV.

(10) “Person” means a natural person, estate, trust, partnership, corporation, tax-option corporation, LLC, insurance company, or trade and business entity of American Indian tribe or band on reservation property or on property held in tribal trust.

(11) “Rural municipality” has the meaning given under s. 560.798 (1), Stats.

**Note:** Section 560.798 (1), Stats., reads: ‘(1) ...“rural municipality” means any of the following: (a) A city, town, or village that is located in a country with a population density of less than 150 persons per square mile.  
(b) A city, town, or village with a population of 6,000 or less.’

(12) “Tax benefit” means a tax credit under s. 560.798 (4) (b) , Stats.

## Subchapter II—Agricultural Development Zones

**Comm 118.10 Application, evaluation and designation.** (1) GENERAL. (a) As specified under s. 560.798 (2) (a), Stats., the department may designate one area in the state as an agricultural development zone. The designation shall be in effect for 10 years from the time the department initially designates an area as an agricultural development zone.

(b) The department may consider designating sub-regions for the administration and operation of the agricultural development zone program.

(c) 1. Except for subd. 2., the department may not designate an agriculture development zone in a county that includes an area designated as a technology zone under s. 560.96, Stats.

2. The department may designate an area as an agricultural development zone when a technology zone includes a municipality that is located within two counties.

(2) APPLICATION. An eligible applicant shall be submitted to the department an application for designation as an agricultural development zone.

(3) APPLICATION CONTENT. Each application for designation as a agricultural development 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 agricultural business development is likely to occur.

(c) A brief description of principal agricultural business development-supporting efforts and activities. This description shall at least include any plan or strategy developed for the attraction, promotion, retention or expansion of agricultural businesses.

**Note:** Examples of principal agricultural business development-supporting efforts may include the presence of other agricultural businesses operating in the area, public facilities that may attract or support agribusiness, and financial or technical assistance available in the area for agribusiness.

(4) EVALUATION/DESIGNATION (a) The department shall evaluate any application submitted by an eligible applicant based on the local capacity and organization of the area as it relates to the attraction, promotion, retention and expansion of agricultural business.

(b) The department shall designate an area as an agricultural development zone when a favorable determination is made based upon local capacity and organization, and conformance to the provisions of this section.

(5) NOTIFICATION OF DESIGNATION. The department shall provide written notification of designation as an agricultural development zone and provide the beginning date of the agricultural development zone duration as specified under sub. (1).

(6) TAX BENEFITS. As specified under s. 560.798, Stats., not more than \$5,000,000 of tax benefits may be claimed in an agricultural development zone for the duration.

**Comm 118.11 Modification of boundaries.** (1) A boundary of an agricultural development zone may be modified after designation by the department upon review of additional information submitted by the agricultural development zone contact.

(2) The modification of an agricultural development zone boundary shall have no effect on the agricultural development zone duration specified under s. Comm 118.10 (1).

### **Subchapter III—Certified Business**

**Comm 118.20 Eligibility for application for business certification.** (1) GENERAL. As provided under s. 560.798, 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 an agricultural development zone may submit an application to become a certified business to the department. The applicant shall meet all of the following:

(a) The person's business is new or expanding.

(b) The person's business meets the definition of an agricultural business specified under s. Comm 118.02 (1).

(c) A written recommendation for certification for the person's business by the agricultural development zone contact.

**Comm 118.21 Application and determination.** (1) SUBMITTAL. A person who meets the provisions specified under s. Comm 118.20 (2) may 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 agricultural business and a designated contact person.

(b) A description of the person's project.

(c) The person's Wisconsin tax identification number.

(d) The names and addresses of other locations outside the agricultural development zone where the person conducts business and a description of the business activities conducted at those locations.

(e) The estimated total investment of the person's business in the agricultural development zone.

(f) The estimated number of full-time jobs that will be created, retained or significantly upgraded in the agricultural development zone because of the person's agricultural business.

(g) The average starting wages and benefits that will be provided to persons hired as a result of the project.

(h) The person's historical and projected financial information.

(i) Other information as required by the department or the agricultural 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 agricultural business to the area.

(b) The amount of private investment that is likely to result from the person's project.

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

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

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

(f) The financial soundness of the agricultural business.

(g) Whether the project will likely positively affect an area's economic distress.

(h) Whether the project will result in the dislocation of an agricultural business from one municipality to another municipality.

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

**(3) NOTIFICATION.** (a) For a person located in an agricultural development 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 an agricultural development zone and enter into an agreement as specified under s. 560.798 (3) (b), Stats.

(b) A person planning to be located in an agricultural development 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 an agricultural development zone. When the business is located in an agricultural development zone, the department shall notify the person of its certification in an agricultural development zone and enter into an agreement as specified under s. 560.798 (3) (b), Stats.

**(4) CERTIFICATION DISALLOWED IN CERTAIN CASES.** No person may be certified under s. 560.798, Stats., if the proposed new business, expansion of an existing business or other proposed economic activity in an agricultural development zone would do either of the following:

(a) Directly results in the loss of full-time jobs at another of the person's agricultural business located in this state but not located within an agricultural development zone.

(b) Directly results in the transfer of employees from a business location in this state to a business location in an agricultural development 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. 560.798, Stats., or if the situation is extraordinary.

**Comm 118.23 Revocation.** (1) The department shall revoke the certification of a person's agricultural business certified under s. 560.798 (3), Stats., in the following circumstances:

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

(b) Cessation of operations as an agricultural business within an agricultural development zone.

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

#### **Subchapter IV—Tax Benefits**

**Comm 118.30 Eligibility.** In accordance with subch. III, the department shall determine the amount of tax benefits a certified business may claim.

**Comm 118.31 Modification.** (1) **INCREASE TAX BENEFITS.** The department may, on the request of a certified business and on the recommendation of the agricultural development 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 an agricultural development zone such that not more than \$5,000,000 in tax credits may be claimed in an agricultural zone.

(b) Revises the certification and provides a copy of the revised certification 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 118.30 or sub. (1) if the department determines that the information on which the limit is based was inaccurate or significantly misestimated.

(b) If the department decreases the tax benefits a certified business may claim, the certification shall be revised and a copy provided to the department of revenue and to the certified business.

**Comm 118.32 Claims.** (1) A certified business shall file for tax benefits using forms acceptable to the department of revenue. Agricultural development 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 industry classification for the person's business. The department shall accept the North American Industry Classification System code (NAICS).

**Note:** For the NAICS classification, 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; webpage: [www.uscensus.gov/epcd/www/naics.html](http://www.uscensus.gov/epcd/www/naics.html).

- (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 (2dm) or (2dx), 71.28 (1dm) or (1dx), and 71.47 (1dm) or (1dx), 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 investments.
- (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 V - Records



**Comm 118.40 Documentation and records.** Certain documents, records, information and other materials submitted to the department 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., as follows:

(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 be 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.az-general.html>.

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**EFFECTIVE DATE**

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

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