

# 07hr\_JCR-AR\_Misc\_pt15



Details: Emergency Rule extension request by Department of Commerce.

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2007-08

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

May 20, 2008

Senator Robert Jauch, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 118 South, Capitol  
Madison, WI 53707

✓ Representative Daniel R. LeMahieu, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 17 North, Capitol  
Madison, WI 53707

Dear Senator Jauch and Representative LeMahieu:

As needed because of section 3578h of 2007 Wisconsin Act 20, this Department adopted an emergency rule earlier this year relating to dairy manufacturing facility investment credits. The emergency rule took effect on February 4, 2008, and is currently in effect. The emergency rule will expire on July 3, 2008, unless an extension is granted by the Joint Committee for Review of Administrative Rules.

In conjunction with adopting the emergency rule and pursuant to chapter 227 of the Statutes, the Department has filed a proposed permanent rule with the Wisconsin Legislative Council (Clearinghouse Rule Number 08-031) to replace the emergency rule. We held a hearing on that rule and the emergency rule on May 14, 2008, and expect to file the permanent rule with the Legislature in early June.


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

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

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

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

Sincerely,

*fa*   
Jack L. Fischer  
Secretary  
Enc.

**ORDER OF THE  
DEPARTMENT OF COMMERCE**

**EMERGENCY RULE RELATING TO DAIRY MANUFACTURING FACILITY  
INVESTMENT CREDITS**

**Finding of Emergency and Rule Analysis**

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

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as "constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015." Section 71.07 (3p) (c) 2m. a. of the Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007-08 is \$600,000.

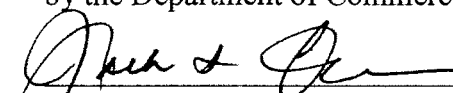
Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in 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 2007 Wisconsin Act 20, 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 incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007-08 fiscal year face near-term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007-08 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 need to soon file their tax returns for taxable years beginning after December 31, 2006.

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

Dated at Madison this 27 day  
of Jan, A.D. 2008,  
by the Department of Commerce

  
Jack L. Fischer, Secretary

FISCAL ESTIMATE  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Charter Comm 132

Amendment No. if Applicable

**Subject**

Dairy manufacturing facility investment credits

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

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

Increase Costs - May be Possible to Absorb Within Agency's Budget  Yes  No

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:

Towns  Villages  Cities

2.  Decrease Costs  
 Permissive  Mandatory

4.  Decrease Revenues  
 Permissive  Mandatory

Counties  Others \_\_\_\_\_

School Districts  WTCS Districts

**Fund Sources Affected**

GPR  FED  PRO  PRS  SEG  SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

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 dairy manufacturing facilities, the number of these reviews and allocations is expected to be too small to result in significant changes in the Department's costs for administering its business development programs. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules address only voluntary submittal of documentation relating to tax credits for investments in dairy manufacturing facilities.

**Long-Range Fiscal Implications**

None known.

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

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

*James O'Keefe* 264-7837

Date

1/28/08

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

ORIGINAL  
 CORRECTED  
 UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.  
 Chapter Comm 132

**Subject**  
 Dairy manufacturing facility investment credits

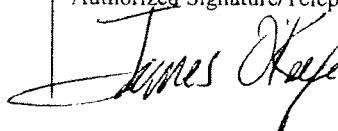
**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
 None known.

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

**NET ANNUALIZED FISCAL IMPACT**

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

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

Authorized Signature/Telephone No.  


Date  
 1/28/08

The Wisconsin Department of Commerce adopts an order to create chapter Comm 132 relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

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### Rule Summary

#### **1. Statutes Interpreted.**

Sections 71.07 (3p), 71.28 (3p), 71.47 (3p), and 560.207 – as created in 2007 Wisconsin Act 20.

#### **2. Statutory Authority.**

Sections 227.11 (2) (a) and 560.207 (4).

#### **3. Explanation of Agency Authority.**

Section 560.207 (4) of the Statutes requires the Department to promulgate rules for implementing and administering a program to certify applicants and allocate tax credits for the dairy manufacturing investments addressed in sections 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

#### **4. Related Statute or Rule.**

The Department has rules for several other programs associated with tax credits, but none of those programs relate specifically to investments in dairy manufacturing facilities. For example, section 560.798 of the Statutes and chapter Comm 118 both refer to the Department's Agricultural Development Zone Program, which provides tax credits to agricultural businesses for job creation, capital investment, and environmental remediation. Those businesses must be located in specific geographic agricultural development zones in the State in order to qualify.

#### **5. Plain Language Analysis.**

The rules in this order specify (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the dairy manufacturing facility investment credit, and to receive acceptance of incurred expenses for dairy manufacturing modernization or expansion; (3) the Department's response to the submitted documentation; and (4) use of the Department's response when filing a claim with the Department of Revenue for the corresponding tax credit.

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

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

## **7. Comparison With Rules in Adjacent States.**

### *Michigan*

Michigan provides tax abatement to agricultural processing facilities that qualify for the Agricultural Processing Renaissance Zones (APRZ) program. There are no administrative rules for the program, but guidelines are available through the Michigan Economic Development Corporation's Web site at <http://www.themedc.org>.

### *Minnesota*

Minnesota offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

### *Iowa*

In Iowa, the High Quality Job Creation Program offers tax credits, exemptions and refunds to qualifying businesses to offset the cost incurred to locate, expand, or modernize an Iowa facility. Qualifying businesses must meet several eligibility requirements, including producing value-added goods or being in one of 11 targeted industries. Administrative rules for this program are available in the Iowa Administrative Code, 261-Chapter 68. Further information is available through the Iowa Department of Economic Development Web site at [www.iowalifechanging.com](http://www.iowalifechanging.com).

### *Illinois*

Illinois offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

## **8. Summary of Factual Data and Analytical Methodologies.**

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue and the Department of Agriculture, and from representatives of the stakeholders who are expected to participate in this program; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

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

The primary document that was used to determine the effect of the rules on small business was 2007 Wisconsin Act 20. This Act requires the Department to implement a program to certify taxpayers as eligible for the dairy manufacturing facility investment credit under sections 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes, and requires the Department to promulgate rules for administering the program. This Act applies its private-sector requirements only to dairy manufacturing for which a corresponding tax credit is desired.

## **10. Effect on Small Business.**

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

## **11. Agency Contact Person.**

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

*File reference: Comm 132/rules, analysis-e*



SECTION 1. Chapter Comm 132 is created to read:

### Chapter Comm 132

#### DAIRY MANUFACTURING FACILITY INVESTMENT CREDIT

**Comm 132.10 Authority and purpose.** Pursuant to s. 560.207 (4), Stats., this chapter sets forth the requirements for obtaining the following from the department:

(1) A certification that a taxpayer is eligible for the dairy manufacturing facility investment credit under ss. 71.07 (3p), 71.28 (3p), and 71.47 (3p), Stats.

(2) A determination of the maximum amount of tax credit that a taxpayer may claim under this chapter for investing in dairy manufacturing facilities.

**Note:** The statute sections listed in this section address income and franchise tax credits for investments in dairy manufacturing facilities.

**Comm 132.20 Definitions.** In this chapter:

(1) "Dairy manufacturing" has the meaning given in s. 71.07 (3p) (a) 2., Stats.

**Note:** Section 71.07 (3p) (a) 2., Stats., reads as follows: " 'Dairy manufacturing' means processing milk into dairy products or processing dairy products for sale commercially."

(2) "Dairy product" means a value-added, saleable product resulting from processing milk or another dairy product – and includes beverage milk products; soft milk products such as yogurt, ice cream and cottage cheese; cheese; butter; non-fat dried milk; whole milk powder; dried whey; whey protein concentrate or isolates; casein; and dairy waste that can be used to produce energy, fuel or industrial products.

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

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

(5) "Milk" means the lacteal secretion of cows, sheep or goats.

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

**Comm 132.30 Applying for certification and allocation.** (1) A person who intends to claim a dairy manufacturing facility investment credit may apply for certification and allocation of the credit.

**Note:** A "person" in this section may include either the operator of a dairy manufacturing operation, or an owner of a building or facility in which the operation occurs.

(2) Application to the department for certification and allocation of the credit shall be made on a valid, department-prescribed form; and shall include a department of revenue tax schedule DM, listing the eligible expenses of the project.

**Note:** The application form that is currently valid can be obtained from the Department at P.O. Box 7970, Madison, WI, 53707. Schedule DM can be obtained from the Department of Revenue at P.O. Box 8949, Madison, WI, 53708-8949; and may be available by accessing that Department's Web site at [www.revenue.wi.gov](http://www.revenue.wi.gov).

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

(a) A description of the business operations of the applicant, in relation to the project.

(b) A description of what the project is.

(c) A description of how the project will promote economic development.

(d) Any other information that the department deems is necessary to evaluate applications and allocate available tax credits.

(e) Any subsequent clarification requested by the department.

(4) Each application shall be completed and either postmarked or delivered to the department, no sooner than upon completion of the claimant's taxable year in which the eligible capital investment occurred, and no later than March 31st of the subsequent taxable year, unless this deadline is extended by the department.

**Comm 132.40 Certification of applicants, and allocation of tax credits.** (1) After receipt of the applications submitted under s. Comm 132.30, the department shall certify the applicants that have met the criteria in s. Comm 132.30 (2) to (4).

(2) In conjunction with certifying an applicant, the department shall determine the maximum amount of tax credit that the applicant may claim.

(3) (a) Due to the \$600,000 and \$700,000 maximum totals established in s. 560.207 (2), Stats., for allocations in fiscal years 2007-08 and thereafter, respectively, the department may allocate the tax credits in a manner that the department believes is most likely to promote economic development.

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

1. The jobs created by the project.
2. The salaries, wages and other employee benefits of the jobs created by the project.
3. The impact of the project on the dairy industry in Wisconsin.

4. The extent to which the area served by the project is economically distressed.
5. The amount of new, eligible capital investment in the project.
6. The impact of the project on business in Wisconsin.
7. Any previous assistance from the department.

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

**Comm 132.50 Notifications.** Following completion of the certifications and allocations in s. Comm 132.40, the department shall notify each applicant of the outcome of their application – and shall notify the department of revenue of every taxpayer certified under this chapter, and the amount of the tax credit allocated to the taxpayer.

**Comm 132.60 Claims.** (1) A certified applicant may file for a tax credit under this chapter using forms acceptable to the department of revenue.

(2) Dairy manufacturing facility investment credit claims shall include at least all of the following:

- (a) A copy of the certification issued by the department under s. Comm 132.50.
- (b) The state employer tax identification number.

(c) The North American Industry Classification System code (NAICS) for the certified applicant.

(END)

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EFFECTIVE DATE

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

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*File reference: Comm 132/rules 2007e*