

Clearinghouse Rule 11-010

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 138 relating to investment tax credits for harvesting or processing woody biomass, and affecting small businesses.

Analysis of Rules

1. Statutes Interpreted.

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

2. Statutory Authority.

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

3. 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.

4. 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.

5. 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.

6. Summary of, and 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.

7. Comparison With 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.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2009 Wisconsin Act 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.

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

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 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.

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

11. Agency Contact Person.

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12. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wi.gov, no later than March 30, 2011. If e-mail submittal is not possible, written comments may be

mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

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