

Clearinghouse Rule 21-040

**STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

**PROPOSED ORDER OF THE DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION REPEALING A RULE**

The Wisconsin department of agriculture, trade and consumer protection (department) is petitioning the joint committee for review of administrative rules to repeal rules the department has determined to be unauthorized rules using the processes under s. 227.26 (4), Stats.

PROPOSED ORDER

- 1 An order of the department of agriculture, trade and consumer protection *to repeal* chs. ATCP 163,
 - 2 164, 165 and 166 *relating to* dairy manufacturing facility investment credit, meat processing
 - 3 facility investment credit, food processing plant and food warehouse investment credit, and woody
 - 4 biomass harvesting and processing credit.
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**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes interpreted: Sections 93.535, 93.54, 93.545, and 93.547, Stats. (2011)

Statutory Authority

Statutory authority: Section 227.26 (4), Stats.

Explanation of Agency Authority

Pursuant to s. 227.26 (4), Stats., the department may petition for repeal of an unauthorized rule. An unauthorized rule is one that “an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.” 2019 Act 54 repealed ss. 93.535, 93.54, 93.545, and 93.547, Stats., which authorized the department to implement programs to certify taxpayers as eligible for the dairy manufacturing facility investment credit, meat processing facility investment credit, food processing plant and food warehouse investment credit, and wood biomass harvesting and processing credit.

Related Statutes and Rules

Sections 71.07 (3p), (3r), (3rm) and (3rn), 71.28 (3p), (3r), (3rm) and (3rn), and 71.47 (3p), (3r), (3rm) and (3rn), Stats. (2011)

Brief Summary of Proposed Rule

2007 Wisconsin Act 20 created the dairy manufacturing facility investment credit, meat processing facility investment credit, food processing plant and food warehouse investment credit, and wood biomass harvesting and processing credit and authorized the department of commerce to implement programs to certify taxpayers as eligible for these credits. With the dissolution of the department of commerce in 2011, the department of agriculture, trade and consumer protection was granted the authorization of these programs under ss. 93.535, 93.545, 93.547 and 93.54, Stats. 2019 Wisconsin Act 54 repealed several obsolete refundable tax credits, including these four tax credits, and repealed the authorization for the department of agriculture, trade and consumer protection to implement programs to certify eligible taxpayers. Therefore, the department has determined that chs. ATCP 163, 164, 165, and 166 are unauthorized due to the passage of 2019 Wisconsin Act 54 and seeks the repeal of these chapters pursuant to s. 227.26 (4), Stats.

Department Contact

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TEXT OF RULE

- 5 **SECTION 1.** Chapters ATCP 163, 164, 165, and 166 are repealed.
- 6 **SECTION 2.** EFFECTIVE DATE. The rules repealed in this order shall take effect on the first
- 7 day of the month following publication in the Wisconsin Administrative Register, pursuant to s.
- 8 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated this __30th__ day of April, 2021.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary-designee