



UPDATE REPORT

THE AMERICAN RECOVERY AND REINVESTMENT ACT: Opportunities for Biomass/Biofuel Projects and Technologies

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The American Recovery and Reinvestment Act of 2009 (“ARRA”), a \$787 billion economic stimulus package, provides a number of new and expanded tax incentives related to biomass, biofuel and other renewable energy projects, and creates new avenues for businesses to fund biomass/biofuel projects and technologies.

Extension of “Eligibility Dates” for PTC. ARRA extends the production tax credit (“PTC”) for open-loop and closed-loop biomass facilities producing electricity. A biomass project “placed in service” on or before December 31, 2013 will qualify for the PTC. Qualified projects will receive a per kilowatt hour credit, currently indexed at 2.1¢ for 2009, for every kilowatt hour generated and sold to a third-party person during each year of the 10-year period beginning on the date the project is originally placed in service.

Election to Claim Investment Tax Credit (“ITC”) in Lieu of PTC. ARRA allows a taxpayer who is eligible to claim the PTC for a closed-loop or open-loop biomass project to instead claim an ITC. The owner of a qualifying biomass facility may elect to claim either the ITC or the PTC, but not both. The ITC allows for a 30% credit on “qualified property” used in a biomass facility, and it may be claimed for biomass facilities placed in service during 2009 or 2010, or, if construction began in 2009 or 2010, before January 1, 2014. If the facility fails to use its entire credit, any unused portion can be carried back one tax year and carried forward up to 20 tax years. Any owner electing to claim an ITC must reduce the facility’s tax basis by one-half of the credit claimed.

On June 5, 2009, the IRS issued Notice 2009-52, describing the procedures for making an irrevocable ITC election in lieu of a PTC election. The Notice is available [here](#).

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Grants in Lieu of Tax Credits. In addition to expanding benefits for, and access to, tax credits, ARRA also enables taxpayers to elect to receive a cash grant from the U.S. Treasury Department in lieu of tax credits. Eligibility for grants is based on the same criteria as eligibility for the ITC or PTC. Qualified property will be eligible for a cash amount equal to either 10% or 30% of the cost of the property. Even after the Treasury Department issued guidance on July 9, 2009, a number of uncertainties remain related to the administration of the cash grant program. For a thorough treatment of the program, complete with its advantages and disadvantages, please consult the Brown Rudnick client alert, published [here](#).

Advanced Energy Facilities Investment Credit.

To encourage the development of a domestic manufacturing base to support the renewable energy industry, ARRA provides a new 30% tax credit to businesses investing in a “qualified advanced energy manufacturing project.” Qualified projects include those that establish, re-equip, or expand manufacturing facilities engaged in, among other things, the production of renewable energy, including closed-loop and open-loop biomass. ARRA will fund the project up to \$2.3 billion. Credits will be awarded through an application process, the procedure of which will be made available by August 16, 2009 through the Treasury Department.

Expanded Energy Bonds. ARRA increases funding for energy bonds. For renewable energy bonds, available for financing closed-loop and open-loop

biomass and other renewable energy facilities, ARRA increases the amount of funds available for issuing new clean renewable energy bonds from \$800 million to \$2.4 billion. For qualified energy conservation bonds, used to fund governmental programs aimed at reducing greenhouse gases and promoting conservation, the cap has been raised from \$800 million to \$3.2 billion.

Expanded DOE Loan Guarantee Program.

ARRA infused an additional \$6 billion into the existing DOE Loan Guarantee Program, resulting in an estimated \$60 billion in support for “qualified programs.” The Energy Policy Act of 2005 that originally established the loan program defines a qualified program as one that employs a “new or significantly improved technology that is not a commercial technology.” Under ARRA, qualified programs now include commercial technology projects for renewable energy systems that will commence construction no later than September 30, 2011.

Federal Grant and Contract Program. As of June 2009, there are two primary clearinghouses where interested parties may search for federal grant and contract opportunities: FedConnect and Grants.gov.

FedConnect serves as an online marketplace for grant and contract opportunities, connecting federal agencies with vendors and interested parties. It may be accessed by any member of the public, although registered vendors gain the added benefit of direct online communication with government agencies. Interested parties wishing to become registered

vendors must obtain a Data Universal Number System (“DUNS”) number to complete the registration process, or use the DUNS number already assigned them.

Parties interested in applying for federal grants can find over 1,000 opportunities, providing over \$500 billion in assistance, through [Grants.gov](#). The web site serves as a clearinghouse for government grant opportunities, making grants available to members primarily in the public sector, but also to members of the private sector. Interested parties can either browse listings by category (e.g., energy or environment) or agency (e.g., Department of Energy or Environmental Protection Agency). As an alternative to browsing listings, interested parties may conduct a basic or **advanced search** for available grants. Parties seeking to locate specific types of grants will be best served by the advanced search function. This function allows parties to narrow the scope of grant opportunities by restricting results based on keyword, date range, agency, eligibility, funding instrument, or funding activity searches. The latter search criterion allows users to search for grants uniquely associated to ARRA.

Eligibility for both grants and contracts varies widely.¹ As such, interested parties should consult individual grant and contract opportunities to learn of their eligibility. In nearly every instance, grantees and sub-awardees of ARRA contracts and grants, who have not previously done so, must obtain a DUNS Number, as well as complete registration with **Central Contractor Registration** (“CCR”). Parties must **obtain a DUNS number** before completing the CCR registration

process. Obtaining a DUNS number may prove to be a lengthy process, so interested parties are advised to begin the application process as soon as possible.

In May 2005, Secretary Chu **announced** plans to provide \$786.5 million from ARRA to fund commercial-scale biorefinery demonstration projects and advanced biofuel research and development projects. As of June 25, 2009, there is one biomass project for which the Department of Energy has solicited applications in connection with ARRA funding. The project, issued June 11, 2009 and open to all applicants, broadly solicits proposals for renewable energy research, development, demonstration, and deployment activities, which includes accelerating the development of biomass technologies. The program is currently funded at \$480 million, with individual awards capped at \$50 million. The application is available **here**. In addition to this project, the Department of Energy has announced plans to launch an additional funding opportunity in Summer 2009. The project, funded at \$85 million, targets the expansion of infrastructure for ethanol blends. Information on this proposed project is available **here**.

¹ARRA has led to a substantial increase in the number of applications for federal grants. Accordingly, grants.gov continues to update and amend the grant application process. For a discussion of the current amendments, see <http://www.grants.gov/applicants/bulletin.jsp>. To remain up to date on future changes to the process, see <http://grants.gov.blogspot.com/>.

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