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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- 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**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

July 15, 2010

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 10-041

RULE NO.: Chapter Comm 137

RELATING TO: Reallocations for Recovery Zone Facility Bonds

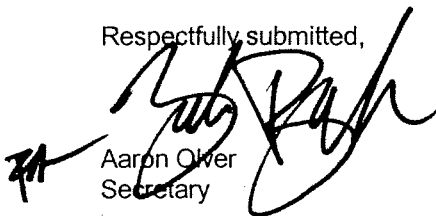
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the chief clerk of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


Aaron Oliver
Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 10-041

Rule No.: Chapter Comm 137

Relating to: Reallocations for Recovery Zone Facility Bonds

Contact person for substantive questions:

Contact person for internal processing:

Name Sam Rockweiler

Name (same)

Title Code Development Consultant

Title _____

Telephone Number 266-0797

Telephone Number _____

1. Basis and purpose of the proposed rule.

As required by SECTION 4 of 2009 Wisconsin Act 112, these rules establish a reallocation system for recovery zone facility bonds, as defined under 26 USC 1400U-3(b)(1), which was created in the federal American Recovery and Reinvestment Act of 2009. These bonds must be issued before January 1, 2011.

2. How the proposed rule advances relevant statutory goals or purposes.

The proposed rules are consistent with all of the related goals and purposes of 2009 Wisconsin Act 112.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes were made to the rule analysis. The fiscal estimate was revised to include an estimate of the annual revenue to the Department for the bond closing fee addressed in section Comm 137.08 (2) (b).

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 10-041

RULE NO.: Chapter Comm 137

RELATING TO: Reallocations for Recovery Zone Facility Bonds

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

Less stringent requirements are not proposed for small businesses because the directive under which these rules are proposed, in 2009 Wisconsin Act 112, does not provide such flexibility.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

No issues were raised.

3. Nature and estimated cost of preparation of any reports by small businesses.

No substantive reporting would be imposed on small businesses.

4. Nature and estimated cost of other measures and investments required of small businesses.

The rules are not expected to impose significant costs on small businesses for other measures because the rules address submittal of documentation, and other activities, only by applicants that choose to participate in the tax-exempt private activity bonding addressed in the rules.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 137

DATE: May 13, 2010

RELATING TO: Reallocations for Recovery Zone Facility Bonds

TIME: 10:00 a.m.

LOCATION: Thompson Commerce Center, Third Floor, Room 3B

CITY: Madison, WI

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
Chuck Hicklin	Dane County	Madison, WI			✓
Mickey Bell	Dane County	Madison, WI			✓
Liz STORTENS	WI COUNCIL ASSN	Madison, WI			✓

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 10-041		Hearing Location: Madison, Wisconsin	
Rule Number: Chapter Comm 137		Hearing Date: May 13, 2010	
Relating to: Reallocations for Recovery Zone Facility Bonds			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral	Mickey Beil Dane County 210 Martin Luther King Jr. Blvd. Madison, Wisconsin	1. Indicates Dane County is recommending modifications that are needed in the rules.	Comment is noted.
Oral and 1	Chuck Hicklin Dane County 210 Martin Luther King, Jr. Boulevard Madison, Wisconsin	2a. Comm 137.05 (7), (9) and (10): States the items required in these sections take time and effort for local governments and private entities to secure. To fulfill these requirements, Dane County would need to introduce and adopt a resolution, a process that requires 3-4 weeks, and would also incur expenses for bond counsel advice prior to even knowing if the Department supports a project. In addition, the private entity would need to pursue credit options such as identifying a bond purchaser or obtaining a letter of credit, without any initial reallocation decision from the department. Believes requiring receipt of these items prior to an initial reallocation will discourage use of the recovery zone facility (RZF) bonds by adding time and costs to the transaction. Believes the Department should delay requiring receipt of these items until after making an initial reallocation decision, which could be based on the information in sections Comm 137.05 (1) to (6).	2a. Agree. The proposed rules have been changed as recommended.
		2b. Comm 137.05 (12): Believes requiring the \$300 payment in this section to be through a certified or cashiers check is unnecessary. Indicates if the Department receives any check from a local government, the Department should honor the check.	2b. Agree. The proposed rules have been changed as recommended.
		2c. Comm 137.09 (2) (b) 1.: Fails to see how the Department can justify a fee of thousands of dollars under this section, after receiving an application fee of \$300. The local-government issuer bears the administrative costs of completing the bond issue, not the Department. Once the Department has reviewed the application and made a reallocation decision, the local government is required to report certain information regarding the bond issuance. The retention of that information by the Department will not warrant a fee of this magnitude. As companies are turning to financial incentives to complete transactions in this difficult economy, it is unfortunate that the Department is seeking to impose a fee that will draw resources away from critical economic development projects.	2c. This fee is the same as the fee for the Midwestern disaster area bonds. It is also similar to the closing fee for standard industrial revenue bonds, other than there is no cap for those bonds. It is not uncommon to charge an origination fee to cover administration costs. The fee is not excessive, due in part to the cap, and should be considered part of the cost of borrowing. The Department has not received any other complaints about this fee from businesses, bond attorneys or others.

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 10-041		Hearing Location: Madison, Wisconsin	
Rule Number: Chapter Comm 137		Hearing Date: May 13, 2010	
Relating to: Reallocations for Recovery Zone Facility Bonds			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral and 2	Liz Stephens Wisconsin Counties Association 22 East Mifflin Street Suite 900 Madison, Wisconsin	<p>2d. Comm 137.09 (4) (a): States the fee imposed by this section to retain an allocation beyond the initial 30 days is entirely unreasonable. It is important that the Department recognize that economic development projects may incur delays, especially those involving government approvals of a conduit bond issue. The Department should not impose punitive measures, such as this required fee, on transactions where parties might be working with all diligence to complete. Once the reallocation has been secured from the Department, the local government and private entity should be allowed 60 days to consummate the transaction. If the transaction runs beyond 60 days, then the local government should be allowed to provide the Department with a petition for a 15-day extension with a date certain of a bond issue.</p> <p>2e. Believes that with the recommended modifications, the rules in chapter Comm 137 will allow local governments to better proceed with what are sometimes delicate and often tenuous negotiations on critical economic development projects. The imposition of additional bureaucratic requirements and unnecessary fees such as those referenced in the current rules will not constructively advance economic development and job creation in this state.</p> <p>3a. Appreciates the Department's efforts to expediently implement the provisions of 2009 Wisconsin Act 112. Agrees with the recommendations from Dane County, and suggests the following modifications with the goal of equitably and cost-effectively redistributing these bonds.</p> <p>3b. Comm 137.04: Believes there needs to be more specific detail about any project that has multiple components, some of which qualify for Midwestern disaster area (MDA) bonds and some of which may not. Believes it is important to specify that where such a project exists, the Department will award RZF bonds for the portion of the project that may not be eligible for MDA bonds but may be eligible for RZF bonds. Projects should first be structured using as much MDA bonds as possible, and then using RZF bonds for any MDA-ineligible portions of the project. This would not create a more difficult situation for the issuer, the borrower or the bond buyer.</p> <p>3c. Comm 137.06: Believes all qualifying projects that a county submits within its original allocation authority should be approved by the Department. That is, if a county is seeking an authorization under this section, the Department should not have discretion in approving the project, since the project falls under the county's originally allocated amount. Similarly, does not believe that a county seeking a reallocation should have to provide the information under this section. Rather, a county should only have to provide the information necessary to demonstrate that a project qualifies for use of RZF bonds. Any project that meets the</p>	<p>2d. All of the requirements relating to this fee have been deleted from the proposed rules.</p> <p>2e. Comment is noted.</p> <p>3a. Support and comment are noted.</p> <p>3b. Agree projects should generally be so structured. The proposed rules have been changed to instead specifically address this consideration during the Department's review process under section Comm 137.05.</p> <p>3c. Disagree that the referenced information should not be required. The Department anticipates having to provide an accounting of the reallocations that it issues, and the information required in this section will be needed for that accounting. In</p>

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 10-041		Hearing Location: Madison, Wisconsin	
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Relating to: Reallocations for Recovery Zone Facility Bonds			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		<p>corresponding Internal Revenue Service requirements should be approved, regardless of whether any additional requirements in this section are met, except if public welfare or safety is involved. Wants to demonstrate to the federal government that all of the available bonding will be used, so that further bonding will be authorized, since these bonds are an extremely flexible and powerful tool for economic development. States that for the first time the federal government is recognizing counties as players at the economic-development table, and wants to demonstrate that counties can be effective players, so that economic activity can be further increased.</p> <p>3d. Comm 137.09 (2) (b) 1. Believes this section requires an unreasonable fee, on top of a \$300 application fee. Believes the Department should not receive these payments, because it is not issuing the bonds. Understands the need for the Department to recover an administrative fee, and does not object to the \$300 application fee, but an additional fee of up to \$10,000 could mitigate the potential financial advantage to a business pursuing an RZF bond allocation. Because the margins between traditional financing and bond financing are much narrower now than in the past, the 0.1% fee in this section could make the difference between a project stalling or going forward, partly because of the additional elements that go into a bond issuance compared to traditional financing, such as other fees that will be imposed by the bond issuers. This interference would conflict with the goal of using all of the available bonding so that further bonding will be authorized.</p>	<p>addition, under section 560.033 (3) of the Statutes, as created in 2009 Act 112, the Department is authorized to establish procedures for, and place conditions upon, the granting of a reallocation that the Department deems to be in the best interest of the State.</p> <p>3d. See response 2c.</p>

File reference: Comm 137/Hearing summary

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

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Chapter Comm 137

Amendment No.

Subject

Reallocations for Recovery Zone Facility Bonds

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
A. State Costs By Category		
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
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$100,000	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$100,000	-\$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 100,000	\$ 0

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

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

James O'Keefe 264-7837

Date

7/1/10

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Chapter Comm 137

Amendment No. if Applicable

Subject

Reallocations for Recovery Zone Facility Bonds

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

The bond closing fee assessed under section Comm 137.08 (2) (b) is estimated to annually average \$5000 from each of 20 projects, for an annual total of \$100,000.

The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to participate in the tax-exempt private activity bonding addressed in the rules.

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

7/1/10



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 10-041

AN ORDER to create chapter Comm 137, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

Submitted by **DEPARTMENT OF COMMERCE**

04-13-2010 RECEIVED BY LEGISLATIVE COUNCIL.

05-10-2010 REPORT SENT TO AGENCY.

RS:SG

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Clearinghouse Director

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CLEARINGHOUSE RULE 10-041

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In s. Comm 137.02 (3) (b), the references to political subdivisions, development and housing authorities, and persons acting on the behalf of named entities appear to cause confusion since these entities appear to already be referenced in s. Comm 137.02 (3) (a), (c), or (d). The department could eliminate confusion by referring only to agencies or authorities in par. (b) and relying on pars. (a), (c), and (d) for inclusion of other entities.

b. Wisconsin’s aggregate amount for the issuance of recovery zone facility bonds should be placed in a note to s. Comm 137.02 (4).

c. In s. Comm 137.02 (6), the department should refer to the statutory definition of “Midwestern disaster area bonds” in s. 66.1104 (1) (bm), Stats.

d. In s. Comm 137.02 (9), the department should refer to the statutory definition of “recovery zone bond” in s. 66.1104 (1) (c), Stats.

e. In s. Comm 137.03 (2) (b) 2., the word “which” should be replaced by the word “that.”

f. In s. Comm 137.04, the department should provide additional clarity regarding treatment that might arise depending on whether Midwestern disaster area bonds are a whole or partial alternative source of financing.

g. In s. Comm 137.05 (7), the department should create separate paragraphs in order to clearly separate the treatment that applies to bonds issued under s. 66.1103, Stats., from the other material in the subsection.

h. In the note at the end of s. Comm 137.05, can the department also make the application form available in electronic form?

i. In s. Comm 137.06 (2) (intro.), the phrase "all of" should be inserted before the phrase "the following." Also, in sub. (2) (c) (intro.), the quotation marks surrounding the first occurrence of the word "green" should be deleted and the material after the first sentence should read: "In this paragraph, "green job" means a job that provides a service or produces a product in any of the following categories:".

j. In s. Comm 137.06 (2) (h), the department should delete the word "not."

k. In s. Comm 137.06 (3), the department should describe the additional material relating to priority and proration as described in s. 560.033 (5), Stats., rather than cross-referencing that material in a note. If the department retains the note, it should refer to s. 560.033 (5), Stats.

l. A period should be placed after the title of s. Comm 137.09.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In items 3. and 5. of the rule summary, the word "sections" preceding "66.1104 (1) (a) and (b)" should be replaced by the word "section."

b. Section Comm 137.03 (3) (b) 5. a. should conclude with a period.

c. Section Comm 137.03 (3) (c) is a cumbersome sentence that may be made clearer as follows:

A written notice to the department in which the city or county states that an agreement, providing for the purchase of recovery zone facility bonds, has been executed by the city, county, other local governmental unit, or authority that will issue the recovery zone facility bonds and by a bond purchaser. The written notice shall include a copy of the agreement.

d. In s. Comm 137.06 (2) (g), what is the definition of the term "shovel-ready"?

e. Section Comm 137.09 (4) (b) 4. would be clearer if it read: "Any refund shall be made within 30 days after a request for the refund. The request for the refund shall include any evidence that the department may reasonably require."

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 10-041

RULE NO.: Chapter Comm 137

RELATING TO: Reallocations for Recovery Zone Facility Bonds

Agency contact person for substantive questions.

Name: Sam Rockweiler

Title: Code Development Consultant

Telephone No. 266-0797

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached



State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Chapter Comm 137

Relating to: Reallocations for Recovery Zone Facility Bonds

Clearinghouse Rule No.: 10-041

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 137 relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.033.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.033.

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.033 (1) of the Statutes directs the Department to establish by rule, a system for reallocating waived allocations for recovery zone facility bonds – as defined under 26 USC 1400U-3(b)(1) – to the authorities and local governmental units which are defined in section 66.1104 (1) (a) and (b) of the Statutes. Section 560.033 (3) of the Statutes authorizes the Department to place any condition on these reallocations that the Department deems is in the best interest of the State.

4. Related Statute or Rule.

Chapter Comm 113 contains rules relating to allocating volume cap on tax-exempt private activity bonds for manufacturing and housing, pursuant to 26 USC 146.

Chapter Comm 136 establishes a procedure by which the Governor can designate tax-exempt Midwestern disaster area bonds that can be issued by, or on behalf of, the State or any political subdivision thereof, under the federal Heartland Disaster Tax Relief Act of 2008. These are private activity bonds that are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

5. Plain Language Analysis.

The rules in this order establish a system for reallocating all of the federal recovery zone facility bond allocations that are not used by June 1, 2010, to the authorities and local governmental units which are defined in section 66.1104 (1) (a) and (b) of the Statutes, as created in 2009 Wisconsin Act 112. This reallocation system includes deadlines that are designed to result in complete use of the federal bond allocation prior to its expiration on December 31, 2010.

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

Current federal law, including the American Recovery and Reinvestment Act of 2009 (ARRA), authorizes certain local governments to issue several different types of tax-exempt bonds, including recovery zone facility bonds. The amount of bonds that may be issued is limited. Through each State, the ARRA allocates to counties, and to cities with a population of at least 100,000, the limited amount of recovery zone facility bonds that may be issued. The ARRA also authorizes these counties and cities to then waive some or all of their allocation, in which case the State in which the local units are located may reallocate the waived allocation to other units of government in that State.

7. Comparison With Rules in Adjacent States.

Minnesota, Illinois, Iowa and Michigan have not yet promulgated any rules relating to counties or cities waiving allocations for recovery zone facility bonds. As a result, each county or city within those States may have developed their own requirements or guidelines for utilizing their portion of the State's recovery zone facility bond allocation.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) reviewing 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development.

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

The primary documents that were used to determine the effect of the rules on small business were 2009 Wisconsin Act 112 and the corresponding criteria in section 1401 of the federal American Recovery and Reinvestment Act of 2009.

No economic impact report was prepared.

10. Effect on Small Business.

The rules are expected to result in only beneficial effects on small business because the rules only address tax-exempt private activity bonds that allow businesses to finance certain depreciable capital projects in areas which are designated by the bond issuers as having significant poverty, unemployment, rate of home foreclosures, or general distress.

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.

File reference: Comm 137/rules, analysis-p LR

SECTION 1. Chapter Comm 137 is created to read:

CHAPTER Comm 137, REALLOCATIONS FOR RECOVERY ZONE FACILITY BONDS

Comm 137.01 Purpose. The purpose of this chapter is to establish a system for the reallocation of waived allocations of the limitation on the issuance of recovery zone facility bonds, as defined under 26 USC 1400U-3(b)(1), among authorities and local governmental units.

Note: 26 USC 1400U-3 was created by Section 1401 of Title I in Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Comm 137.02 Definitions. In this chapter:

(1) "Authority" has the meaning specified in s. 66.1104 (1) (a), Stats.

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

(3) "Issuer" means any of the following:

(a) A municipality.

(b) An agency or authority that is empowered to borrow money, including any redevelopment authority, community development authority, or housing authority established by or on behalf of these entities.

(c) A person acting for or on behalf of an entity listed in par. (a) or (b).

(d) Any public corporation or commission established by or on behalf of an entity listed in par. (a) or (b).

(4) "Limitation on aggregate amount" means the limitation applicable to the state of Wisconsin on the aggregate amount for the issuance of recovery zone facility bonds.

Note: The limitation on aggregate amount for Wisconsin is \$238,217,000.

(5) "Local governmental unit" has the meaning specified in s. 66.1104 (1) (b), Stats.

(6) "Midwestern disaster area bond" has the meaning specified in s. 66.1104 (1) (bm), Stats.

Note: Section 66.1104 (1) (bm) of the Statutes reads as follows: " 'Midwestern disaster area bond' means a bond described under 26 USC 1400N(a), as modified by P.L. 110-343, title VII, subtitle A, section 702(d)(intro.) and (1)."

(7) "Municipality" has the meaning given in s. 67.01 (5), Stats.

Note: Section 67.01 (5) of the Statutes reads as follows: " 'Municipality' means any of the following which is authorized to levy a tax: a county, city, village, town, school district, board of park commissioners,

technical college district, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, town sanitary district under subch. IX of ch. 60, transit authority created under s. 66.1039, public inland lake protection and rehabilitation district established under s. 33.23, 33.235, or 33.24, and any other public body empowered to borrow money and issue obligations to repay the money out of public funds or revenues. 'Municipality' does not include the state."

(8) "Project" means any project for which recovery zone facility bonds may be issued.

(9) "Recovery zone facility bond" or "recovery zone bond" has the meaning specified in s. 66.1104 (1) (c), Stats.

Note: Section 66.1104 (1) (c) of the Statutes reads as follows: " 'Recovery zone bond' means a bond described under 26 USC 1400U-3(b)(1)."

(10) "Shovel-ready" means planning has been completed, approvals have been secured, and construction or equipment acquisition is ready to proceed after the funding is in place for the project.

Comm 137.03 Accounting for the limitation on aggregate amount, waiver and reallocation. (1) The department shall keep a record of all waived allocations received, and reallocations made, by the department pursuant to s. 560.033, Stats.

(2) (a) The allocation of the limitation on aggregate amount received by a city or county shall be considered waived on March 1, 2010, except with regard to any amount about which the city or county sends written notice to the department before that date in which the city or county does one of the following:

1. States that recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount.

2. Identifies the amount of a proposed issuance of recovery zone facility bonds and the nongovernmental entity that will own or operate the project being financed and includes a letter addressed to the department from the prospective purchaser of the recovery zone facility bonds that states the expectation of the prospective purchaser that an agreement will be executed before May 1, 2010, providing for the purchase of the recovery zone facility bonds and that the recovery zone facility bonds will be issued before June 1, 2010.

(b) The allocation of the limitation on aggregate amount received by a city or county and not waived pursuant to par. (a) shall be considered waived on May 1, 2010, except with regard to any amount about which the city or county sends written notice to the department before that date in which the city or county states one of the following:

1. That recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount.

2. That an agreement has been executed by the city, county, other local governmental unit, or authority that will issue the recovery zone facility bonds, and a bond purchaser, providing for the purchase of recovery zone facility bonds.

(c) The allocation of the limitation on aggregate amount received by a city or county and not waived pursuant to par. (a) or (b) shall be considered waived on June 1, 2010, except with regard to any amount about which the city or county sends written notice to the department before that date in which the city or county states that recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount.

(3) (a) The written notice to the department under sub. (2), shall consist of an official letter from a city or county, that is signed by the mayor, city manager, county board chairman or county executive.

(b) A written notice to the department in which the city or county states that recovery zone facility bonds have been issued pursuant to the city's or county's allocation of the limitation on aggregate amount shall include all of the following information for statistical purposes:

1. The amount of the bond issue.
2. The nongovernmental entity that will own or operate the project being financed.
3. The date of the bond issue.
4. The bond purchaser.
5. The economic impact of the project being financed including all of the following information:
 - a. The total investment in the project.
 - b. The total number of full-time jobs that will be created, retained or substantially upgraded in connection with the project.
 - c. The average wages and benefits that will be provided to persons hired as a result of the project.

Note: The written notice can either be sent by mail to Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI 53707, or by fax at 608-264-6151, or by email to Steven.Sabatke@Wisconsin.gov.

(c) A written notice to the department in which the city or county states that an agreement as described in sub. (2) (b) 2. has been executed shall include a copy of the agreement.

Comm 137.04 (1) REQUEST PROCESS. A request for a reallocation of the limitation on aggregate amount under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

- (a) The name and address of the issuer.

(b) A description of the project, including the name and address of the owner, operator or sponsor of the project and the trade or business in which the project will be used.

(c) The location of the project including both the county and the city, village or town.

(d) The total investment in the project.

(e) The total number of full-time jobs that will be created, retained or substantially upgraded in connection with the project.

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

(g) The requested amount of the reallocation.

Note: The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707 or from the Department's Web site at commerce.wi.gov.

(2) CERTIFICATION ITEMS. In addition to the material required in sub. (1), the department shall receive all of the following prior to certification of a reallocation of the limitation on aggregate amount:

(a) 1. Evidence that official action has been taken by the issuer with respect to the issuance of the bonds.

2. For bonds issued pursuant to s. 66.1103, Stats., the evidence under subd. 1. shall be the initial resolution previously filed with the department with respect to the bonds.

(b) Evidence that a recovery zone, as defined in 26 USC 1400U-1(b), has been designated by the issuer or by the county or the city in which the project is located.

(c) A letter from bond counsel to the effect that the obligations would constitute recovery zone facility bonds.

(d) A letter from a financial institution indicating a commitment to either purchase the obligations upon delivery by the issuer or issue a letter of credit.

(e) A nonrefundable payment of \$300 by cash or by check payable to the department.

Comm 137.05 Review process. (1) Except as provided in sub. (3), the department shall review each reallocation request in the order in which qualifying requests are received.

(2) For the reallocation requests that meet the requirements of s. Comm 137.04, the department shall evaluate the included projects based upon consideration of all of the following:

(a) The prospects for new investment and economic development in the area.

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

(c) The number of full-time jobs that are likely to be created or retained as a result of the project including green jobs that are created as a result of the project. In this paragraph, "green job" means a job that provides a service or produces a product in any of the following categories:

1. Increasing energy efficiency.
2. Producing renewable energy.
3. Recycling existing materials.
4. Preventing, reducing or mitigating environmental degradation.
5. Cleaning up and restoring the natural environment.

(d) Whether the project will result in the dislocation of a business from one municipality to another.

(e) Whether the project can be financed in whole or in part by any other forms of tax-exempt private activity financing, such as industrial revenue bonds or Midwestern disaster area bonds.

(f) The feasibility of the financial commitment for the bond issue.

(g) Whether the project is likely to occur or continue without the reallocation.

(h) The degree to which the project is shovel-ready.

(i) Whether a reallocation in the requested amount would cause the aggregate amount of allocations under this chapter to exceed the aggregate amount of waived allocations.

(j) The adequacy of any remaining waived allocation for other pending or expected requests.

(k) Any other factors that the department considers relevant.

(3) (a) In reviewing an application for a reallocation that is made after March 1, 2010, but before June 1, 2010, the department shall give priority to those requests for projects in the cities or counties that waived their allocations provided the request does not exceed the amount of the allocation that the city or county waived.

(b) Any priority assigned under this subsection shall comply with the allocation limitations specified in s. 560.033 (5), Stats.

Note: Section 560.033 (5) of the Statutes reads as follows: "For a reallocation made under this section after March 1, 2010, but before June 1, 2010, before making the reallocation, the department shall consider the amount of recovery zone bond limitation allocation waived under s. 66.1104 (2) (a) or (b) by each city or county then seeking a reallocation under this section. The department shall reallocate from the aggregated waived allocation, as that term is used in sub. (1), an allocation of the recovery zone bond limitation to a project in a city or county that waived an allocation under s. 66.1104 (2) (a) or (b) in an amount up to the total limitation allocation waived by the city or county or equal to the limitation allocation determined by the city or county to be necessary for the project, whichever is less. In the event requests by cities and counties for a reallocation under this section exceed the aggregated waived allocation, the department shall prorate the available waived allocation among cities and counties in proportion to the amount waived by the cities and counties."

Comm 137.06 Certification process. If the department approves an application under this chapter, the department shall promptly certify and reallocate the amount requested to the issuer. The reallocation shall be valid for a period equal to the lesser of 60 calendar days or the remainder of the calendar year 2010. The issuer may petition the department for a 15-day extension. The amount of the reallocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain reallocations are subject to earlier termination pursuant to s. Comm 137.08 (3). Any reallocation made under this section shall be valid only with respect to bonds issued in calendar year 2010.

Comm 137.07 Emergency. Based upon the federal tax law requirement that a recovery zone facility bond must be issued prior to January 1, 2011, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

Comm 137.08 Post-reallocation process. (1) After making a reallocation, the department shall record that the corresponding portion of the limitation on aggregate amount has been allocated.

(2) (a) Each issuer shall notify the department in writing as to the amount of recovery zone facility bonds issued pursuant to the reallocation, within 5 business days after the issuance of the bonds. Each notification shall include all of the following information:

1. The date of the bond issue.
2. The term of the bond issue and interest rate.
3. The bond purchaser and whether the bond issue was either a private placement or public sale.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount of the bonds issued pursuant to the reallocation, up to a maximum of \$10,000, by cash or by a certified or cashier's check payable to the department.

2. The payment in subd. 1 may be reduced by the amount paid to the department under s. Comm 137.04 (2) (e).

(3) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a reallocation under this chapter. Upon surrender, the surrendered portion of the reallocation shall expire.

(4) All recovery zone facility bonds shall be issued before January 1, 2011.

(END)

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

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