comm113_EmR0831.pdf **Commerce – Revises Ch. Comm 113 – EmR0831**
ORDER OF THE DEPARTMENT OF COMMERCE
EMERGENCY RULE RELATING TO ALLOCATION OF VOLUME CAP ON
TAX-EXEMPT PRIVATE ACTIVITY BONDS

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. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the "Act"), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one-time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single-family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

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.

The Wisconsin Department of Commerce adopts an order to create section Comm 113.03 (4) relating to the one-time allocation for calendar year 2008 of private activity bond volume cap under section 146(d) of the Internal Revenue Code of 1986, awarded to Wisconsin pursuant to the federal Housing and Economic Recovery Act of 2008, and affecting small businesses.

Rule Summary

1. Statutes Interpreted. Section 560.032.
2. Statutory Authority. Section 560.032.
3. Explanation of Agency Authority.
Section 560.032 of the Statutes requires the Department to promulgate rules for establishing and administering a system, under 26 USC 146, for allocating the federal volume cap on tax-exempt private activity bonds, as defined under 26 USC 141 (a), among various Wisconsin issuers, including the Wisconsin Housing and Economic Development Authority (WHEDA).
4. Related Statute or Rule.
The Department has statutes and rules for several programs associated with housing assistance and community development – such as chapter Comm 154, Small Cities Community Development Block Grants for Housing; and chapter Comm 108, Community Development Block Grant Program – but only chapter Comm 113 contains rules relating to allocating a volume cap on tax-exempt private activity bonds for housing.
5. Plain Language Analysis.
The rules in this order allocate to WHEDA for calendar year 2008 the one-time additional $175.4 million in tax-exempt bonding authority that has been awarded to Wisconsin for single-family and multifamily housing activities, under section 3021 of the federal Housing and Economic Recovery Act of 2008.
6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.
Section 3021 of the federal Housing and Economic Recovery Act of 2008 amends subsection (d) of section 146 of the Internal Revenue Code to create a special one-time increase in the allocation of volume cap for calendar year 2008, to be used for the issuance of single-family housing bonds and multifamily bonds. Notice 2008-79 from the Internal Revenue Service specifies the amount of the increase that is allocated to each State.
7. Comparison With Rules in Adjacent States.
Michigan
According to staff in the Michigan Department of Revenue, Michigan has statutes that address allocation of their volume cap for tax-exempt private activity bonds, and they are administering the allocation directly under those statutes rather than under corresponding rules. Consequently, no rulemaking is anticipated for administering their one-time, 2008 volume cap increase of $315.4 million.
Minnesota
According to staff in the Minnesota Department of Finance and Employee Relations, Minnesota has statutes that address allocation of their volume cap for tax-exempt private activity bonds, and they are administering the allocation directly

under those statutes rather than under corresponding rules. Consequently, no rulemaking is anticipated for administering their one-time, 2008 volume cap increase of $162.7 million.

Iowa

According to staff in the Iowa Finance Authority, Iowa has statutes and corresponding rules that address allocation of their volume cap for tax-exempt private activity bonds, and they are administering the allocation under those statutes and rules. However, no rulemaking is anticipated for administering their one-time, 2008 volume cap increase of $96.6 million.

Illinois

Section 30 ILCA 345 of the Illinois statutes designates the Governor's Office as the entity charged with allocating their volume cap for tax-exempt private activity bonds, and specifies that the guidelines and procedures which are issued by the Governor's Office govern and control the administration of the allocation process in accordance with section 30 ILCA 345. The one-time, 2008 volume cap increase for Illinois is $402.4 million.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of reviewing the criteria in section 3021 of the federal Housing and Economic Recovery Act of 2008; a summary of the Act, from the National Council of State Housing Agencies; and Notice 2008-79 from the Internal Revenue Service.

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 the federal Housing and Economic Recovery Act of 2008; a summary of the Act, from the National Council of State Housing Agencies; and Notice 2008-79 from the Internal Revenue Service.

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 a temporary increase in WHEDA bonding authority for single-family and multifamily housing activities.

11. Agency Contact Person.

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SECTION 1. Section Comm 113.03 (4) is created to read:

Comm 113.03 (4) There is allocated to WHEDA for the calendar year 2008, the volume cap allocated to Wisconsin pursuant to s. 3021 of the Housing and Economic Recovery Act of 2008, to be utilized by WHEDA for single-family housing bonds or multifamily housing bonds. WHEDA shall certify to the department promptly after issuance the total amount of private activity bonds issued pursuant to this allocation.

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. **(September 27, 2008)**