



---

---

## 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 01-070

AN ORDER to repeal Comm 113.02 (1), 113.041 and 113.06 (2); to renumber Comm 113.02 (2) and 113.07 (1) (k); to amend Comm 113.06 (1) and (4) (a) and 113.07 (2), (3) and (4); to repeal and recreate Comm 113.03; and to create Comm 113.02 (2) and (19) and 113.07 (1) (k) and (L), relating to the allocation of volume cap on tax-exempt private activity bonds.

Submitted by **DEPARTMENT OF COMMERCE**

06-15-01 RECEIVED BY LEGISLATIVE COUNCIL.

07-12-01 REPORT SENT TO AGENCY.

RNS:RJC;jal;ksm

**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

---

---

Ronald Sklansky  
*Clearinghouse Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 01-070

#### Comments

**[NOTE:** All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

#### 2. Form, Style and Placement in Administrative Code

a. SECTION 7 of the rule should be divided into two separate treatments. First, s. Comm 113.06 (1) should be renumbered s. Comm 113.06 (1) (a) and amended as shown. Second, a new SECTION creating pars. (b) through (e) could be inserted after SECTION 7. Doing this would eliminate the need for the underscoring of the created material.

b. The treatment clause of SECTION 10 should state "Comm 13.07 (1) (k) is renumbered Comm 13.07 (1) (m)."

c. In SECTION 12, it is suggested that an upper-case "L" replace the lower-case "l" to avoid confusion with the numeral one. Also, "FEIN" should either be defined or spelled out.

d. In SECTION 13, "aa" should follow the underscored material.

e. SECTION 14 of the rule should be revised to simply provide that s. Comm 113.07 (3) (c) 1. to 7. are repealed. This would eliminate the need to have to reproduce the entirety of sub. (3) and show all of the stricken material. [See s. 1.06 (1), Manual.]

f. The treatment in SECTION 15 of the rule can be simplified. For example, rather than striking through the material to be repealed and underscoring new material, it would be simpler to provide that s. Comm 113.07 (4) (e) is repealed and that s. Comm 113.07 (4) (f) through (j) are renumbered pars. (e) through (i). This should be accomplished in two different SECTIONS of the rule.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Although the Rule Report indicates that there are no known federal regulations which are relevant to the rule, it is noted that s. 560.032, Stats., refers specifically to various provisions of the U.S. Code, e.g., 26 U.S.C. ss. 141 (a) and 146. The relevance of these federal statutes and any related regulations should be reviewed.

b. SECTION 3 of the rule defines "brownfields." It is noted that the rule could be simplified by providing a cross-reference to the definition of "brownfields" that is contained in s. 560.13 (1) (a), Stats.

c. Section Comm 113.06 (1) refers to the department annually developing an allocation plan. Where will this plan be developed and how may interested persons obtain a copy? Will the plan be developed in the rules?

d. Section Comm 113.06 (1) (a) requires businesses to submit a prospect data sheet. Where can this prospect data sheet be obtained? A note should be contained in the rule identifying where this sheet may be obtained by businesses seeking to file an application.

Also, what is a "Commerce Area Development Manager"? Can a definition or cross-reference be provided? In addition, the term should be lower case.

e. Section Comm 113.06 (1) (d) provides that if the business accepts the proposal in writing, the business may then proceed with the volume cap allocation process on behalf of the issuer. What is the "volume cap allocation process"? Is this the process under s. Comm 113.07? An appropriate cross-reference should be provided.

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

a. Section Comm 113.06 (1) refers to "exempt environmental projects." What are these projects? Can a definition or cross-reference be provided?

b. Section Comm 113.07 (1) (L) provides that if documents or information submitted with an application contain certain types of information, the documents or information are not subject to public disclosure. Is it the department's intent to comply with s. 19.36 (6), Stats., of the Open Records Law, which provides that if a record contains information that is subject to disclosure and information that is not subject to disclosure, the authority having custody of the record must provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release? Or, in the alternative, will all of the information contained in the document be withheld from disclosure? If the latter is the case, an appropriate statutory reference citing the department's authority to apply this provision should be cited. If the former is the case, the rule should be clarified.



State of Wisconsin \ Department of Commerce

# HEARING DRAFT of PROPOSED RULES

**Rule No.:**

Chapter Comm 113

**Relating to:**

Allocation of Volume Cap on Tax-Exempt

Private Activity Bonds

The Department of Commerce proposes an order to repeal ss. Comm 113.02(1), Comm 113.041, and Comm 113.06(2); to renumber ss. Comm 113.02(2), and Comm 113.07(1)(k); to amend ss. Comm 113.06(1), Comm 113.06(4)(a), Comm 113.07(2), Comm 113.07(3), and Comm 113.07(4); to repeal and recreate s. Comm 113.03; and to create ss. Comm 113.02(2), Comm 113.02(19), Comm 113.07(1)(k), and Comm 113.07(1)(l), relating to the allocation of volume cap on tax-exempt private activity bonds.

\*\*\*\*\*

**Analysis of Proposed Rules**

Statutory Authority: ss. 560.02(4) and 560.032, Stats.

Statutes Interpreted: s. 560.032, Stats.

Pursuant to section 560.032, Stats., the Department of Commerce is responsible for administering the allocation of volume cap on tax-exempt private activity bonds. The proposed rule has been adopted as an emergency rule to incorporate into the administrative code recent changes to the Internal Revenue Code which increase state volume cap limits on tax-exempt private activity bonds. The year 2000 limit in the Internal Revenue Code was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002 the limit will be \$75.00; and thereafter the limit will be indexed to inflation. The rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and the Department of Commerce. The current rules are also being revised to provide an allocation process that will allow the Department of Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

\*\*\*\*\*

SECTION 1. Comm 113.02 (1) is repealed.

SECTION 2. Comm 113.02 (2) is renumbered (1).

SECTION 3. Comm 113.02 (2) is created to read:

*- call just now - ref s. 500.13(1)(a)*

**Comm 113.02 (2)** "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

SECTION 4. Comm 113.02 (19) is created to read:

**Comm 113.02 (19)** "WHEDA" means the Wisconsin Housing and Economic Development Authority.

SECTION 5. Comm 113.03 is repealed and recreated to read:

**Comm 113.03 Allocation to WHEDA.** (1) There is allocated annually to WHEDA 50% of the base level established by the total amount of unified volume cap for the year 2000, less the \$10 million set aside for the building commission, plus a percentage of the total increase above that base in volume cap as follows: 2001 (75%), 2002 (70%), 2003 (65%), 2004 (60%). In the year 2005, and thereafter, WHEDA shall be allocated 50% of the total amount of unified volume cap less the amount allocated to the building commission under s. Comm 113.04.

(2) The volume cap allocated to WHEDA shall be further allocated to local issuers by WHEDA under sub. (3) or utilized by WHEDA for single-family housing bonds, multi-family housing bonds and beginning farmer bonds. WHEDA shall certify to the department promptly after issuance of any private activity bonds the total amount of the bonds issued pursuant to this allocation.

(3) From the volume cap allocated under sub. (2), WHEDA shall, until October 1 each year, set aside \$15 million in volume cap for local issuers of multi-family housing bonds pursuant to guidelines established by WHEDA and approved by the department. WHEDA shall consider requests in excess of the set aside until October 1 each year.

SECTION 6. Comm 113.041 is repealed.

SECTION 7. Comm 113.06 (1) is amended to read:

**Comm 113.06 Department's allocation; allocation process.** (1) There is allocated to the department the remainder of the annual unified volume cap, including any amount that is

surrendered, transferred or terminated under s. Comm 113.04, or 113.06 (6), or 113.07 (6), which shall be allocated for issuer-owned project bonds, economic development bonds and other private activity bonds, but not for single family housing bonds or multi-family housing bonds. In the year 2005 and thereafter, for any unified volume cap transferred under s. Comm 113.04, the department shall allocate 50% of the volume cap to WHEDA. The department will annually develop an allocation plan, which may include but not be limited to specific set-asides for exempt environmental projects and specific targeted industries.

4  
where will it be for → In the rules → In the Not covered in the

(b) (a) The department shall conduct a review and evaluation of each project in accordance with the annual allocation plan. The business must submit through a Commerce Area Development Manager a completed prospect data sheet.

Created to read

lower case 4

When can project be done or determined?

(b) The department shall evaluate the project based upon the following:

1. The project serves a public purpose.
2. The project will likely retain or increase employment in this state.
3. The project will likely positively affect an area's economic distress.

(c) In making a determination, the council and the department shall consider all of the following:

1. The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.
2. The prospects for new investment and economic development in the area.
3. The amount of investment that is likely to result from the project.
4. The number of jobs that are likely to be retained or created as a result of the project. - in the area
5. The competitive effect of the allocation of unified volume cap on other businesses in the area.
6. Whether the project will result in dislocation of a business from one municipality to another.
7. Whether the project will result in the redevelopment of a brownfield site.
8. Whether the project is likely to occur or continue without allocation of the unified volume cap.
9. The financial soundness of the business.

No to be done

10. The ability of the eligible recipient to repay the bond.

11. Any other factors that the department considers relevant.

(d) If a determination is made to recommend the project for an allocation of volume cap, the department will send a proposal letter to the business indicating the amount of volume cap and any other conditions that the department has determined must be met. If the business accepts the proposal in writing, the business may then proceed with the volume cap allocation process on behalf of the issuer.

- Does this go to 113.07

What process X-ref

SECTION 8. Comm 113.06 (2) is repealed.

SECTION 9. Comm 113.06 (4) (a) is amended to read:

**Comm 113.06 (4) (a)** Each issuer shall notify the department in writing as to the amount of obligations issued pursuant to the allocation within 5 business days after the issuance of bonds and as a part of the notification, make a payment by cash or cashier's check to the department equal to ~~3~~ 10 one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

Comm 113.07 (1)

SECTION 10. Comm 113.07 (1) (k) is renumbered (m).

SECTION 11. Comm 113.07 (1) (k) is created to read:

**Comm 113.07 (1) (k)** A written, signed commitment letter from a financial institution indicating a commitment to purchase or place the obligations upon delivery by the issuer.

SECTION 12. Comm 113.07 (1) (l) is created to read:

**Comm 113.07 (1) (l)** Documents or information submitted with an application that contain trade secret information, social security or FEIN numbers, private financial information, or tax documents or information are not subject to public disclosure.

SECTION 13. Comm 113.07 (2) is amended to read:

**Comm 113.07 (2)** Upon receipt of a completed prospect data sheet <sup>an</sup> application, the department shall evaluate whether it meets the requirements of sub. (3) and ~~score the application based upon a comparative ranking with other applications received. Comparative rankings shall be based upon the department's consideration of the factors in subs. (3) and (4).~~ The department may establish a cutoff score for applications submitted to the council and the secretary for consideration and approval.

SECTION 14. Comm 113.07 (3) is amended to read:

2  
**Comm 113.07 (3)** The council and the department may approve an allocation of the unified volume cap if they determine all of the following:

- (a) The project serves a public purpose.
- (b) The project will likely retain or increase employment in this state.
- (c) The project will likely positively affect an area's economic distress.

~~1. The unemployment rate in the area is higher than the state average for the 18 months immediately preceding the date on which the application under sub. (1) was submitted to the department.~~

*apex*  
~~2. The percentage of persons residing in the area who are members of households with household income levels at or below 80% of the statewide median household income is higher than the state average.~~

~~3. The percentage of households in the area receiving unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats. is higher than the state average.~~

~~4. In the 36 months immediately preceding the date on which the application under sub. (1) was submitted to the department, a number of workers in the area were permanently laid off by their employer or became unemployed as a result of a business action subject to s. 109.07 (1m), Stats.~~

~~5. An employer in the vicinity of the area has given public notice under s. 109.07 (1m), Stats. of either a business closing or a mass layoff of at least 25 employees, or 25% of the employees, of a business whichever is greater, that will result in a number of workers in the area being laid off permanently.~~

~~6. Property values in the area have been declining.~~

~~7. There has been a decline in the population in the area.~~

*(r) remove s. 6 j a i e to i*  
SECTION 15. Comm 113.07 (4) is amended to read:

**Comm 113.07 (4)** In making a determination under sub. (3), the council and the department shall consider all of the following:

(a) The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.

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

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

(d) The number of jobs that are likely to be retained or created as a result of the project.

~~(e) The number of jobs that are likely to be made available as a result of the project to persons who are recipients of unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats.~~

~~(f) (e)~~ The competitive effect of the allocation of unified volume cap on other businesses in the area.

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

~~(h) (g)~~ Whether the project will result in the redevelopment of a brownfield site.

~~(i) (h)~~ Whether the project is likely to occur or continue without allocation of the unified volume cap.

~~(j) (i)~~ Any other factors that the department and the council consider relevant.

(END)

\*\*\*\*\*

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

\*\*\*\*\*

**DEPARTMENT OF COMMERCE**  
**EMERGENCY RULE RELATING TO THE**  
**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 the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare.

**Analysis of Rules**

Statutory Authority: ss.560.02(4) and 560.032, Stats.

Statutes Interpreted: s. 560.032, Stats.

Pursuant to s.560.032, Stats., the Department of Commerce (Commerce) is responsible for administering the allocation of volume cap. The emergency rule is being adopted to incorporate in the administrative code recent changes to the Internal Revenue Code (Section CFR 146) which increases state volume cap limits on tax-exempt private activity bonds. The year 2000 limit was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002, the limit will be \$75.00; and thereafter, the limit will be indexed to inflation. The rule identifies a formula for the allocation of volume cap for the year 2001 and future years. This emergency rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and Commerce. The rules are also being revised to provide an allocation process that will allow Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

**Contact Person**

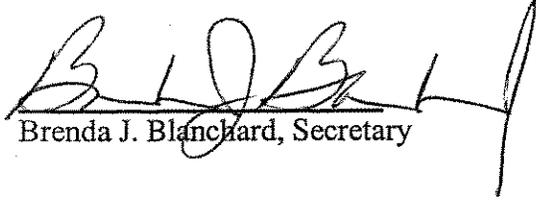
William Wheeler, Director

608-267-2045

**ORDER**

Pursuant to Section 227.24, Stats., the Department of Commerce hereby adopts an emergency rule to repeal 113.02 (1), 113.041, 113.06(2); to renumber 113.02(2), 113.07(1)(k); to amend ss. Comm 113.06(1), 113.06(4)(a), 113.07(2); 113.07(3), 113.07(4); to repeal and recreate Comm 113.03; and to create ss. Comm 113.02(2), 113.02(19), 113.07(1)(k), 113.07(1)(l) relating to the allocation of volume cap on tax exempt private activity bonds. This emergency rule takes effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this 23<sup>rd</sup>  
~~th~~  
day of April, A.D. 2001,  
By the Department of Commerce



Brenda J. Blanchard, Secretary

SECTION 1. Comm 113.02 (1) is repealed.

SECTION 2. Comm 113.02 (2) is renumbered (1).

SECTION 3. Comm 113.02 (2) is created to read:

**Comm 113.02 (2)** "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

SECTION 4. Comm 113.02 (19) is created to read:

**Comm 113.02 (19)** "WHEDA" means the Wisconsin Housing and Economic Development Authority.

SECTION 5. Comm 113.03 is repealed and recreated to read:

**Comm 113.03 Allocation to WHEDA.** (1) There is allocated annually to WHEDA 50% of the base level established by the total amount of unified volume cap for the year 2000, less the \$10 million set aside for the building commission, plus a percentage of the total increase above that base in volume cap as follows: 2001 (75%), 2002 (70%), 2003 (65%), 2004 (60%). In the year 2005, and thereafter, WHEDA shall be allocated 50% of the total amount of unified volume cap less the amount allocated to the building commission under s. Comm 113.04.

(2) The volume cap allocated to WHEDA shall be further allocated to local issuers by WHEDA under sub. (3) or utilized by WHEDA for single-family housing bonds, multi-family housing bonds and beginning farmer bonds. WHEDA shall certify to the department promptly after issuance of any private activity bonds the total amount of the bonds issued pursuant to this allocation

(3) From the volume cap allocated under sub. (2), WHEDA shall, until October 1 each year, set aside \$15 million in volume cap for local issuers of multi-family housing bonds pursuant to guidelines established by WHEDA and approved by the department. WHEDA shall consider requests in excess of the set aside until October 1 each year.

SECTION 6. Comm 113.041 is repealed.

SECTION 7. Comm 113.06(1) is amended to read:

**Comm 113.06 Department's allocation; allocation process.** (1) There is allocated to the department the remainder of the annual unified volume cap, including any amount that is surrendered, transferred or terminated under ss. Comm 113.04, ~~or 113.06 (6), or 113.07 (6)~~, which shall be allocated for issuer-owned project bonds, economic development bonds and other private activity bonds, but not for single family housing bonds or multi-family housing bonds. In the year 2005 and thereafter, for any unified volume cap transferred under s. Comm 113.04, the department shall allocate 50% of the volume cap to WHEDA. The department will annually develop an allocation plan, which may include but not be limited to specific set-asides for exempt environmental projects and specific targeted industries.

(a) The department shall conduct a review and evaluation of each project in accordance with the annual allocation plan. The business must submit through a Commerce Area Development Manager a completed prospect data sheet.

(b)The department shall evaluate the project based upon the following:

1. The project serves a public purpose.
2. The project will likely retain or increase employment in this state.
3. The project will likely positively affect an area's economic distress.

(c) In making a determination, the council and the department shall consider all of the following:

1. The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.
2. The prospects for new investment and economic development in the area.
3. The amount of investment that is likely to result from the project.
4. The number of jobs that are likely to be retained or created as a result of the project.
5. The competitive effect of the allocation of unified volume cap on other businesses in the area.
6. Whether the project will result in dislocation of a business from one municipality to another.

7. Whether the project will result in the redevelopment of a brownfield site.

8. Whether the project is likely to occur or continue without allocation of the unified volume cap.

9. The financial soundness of the business.

10. The ability of the eligible recipient to repay the bond.

11. Any other factors that the department considers relevant.

(d) If a determination is made to recommend the project for an allocation of volume cap, the department will send a proposal letter to the business indicating the amount of volume cap and any other conditions that the department has determined must be met. If the business accepts the proposal in writing, the business may then proceed with the volume cap allocation process on behalf of the issuer.

SECTION 8. Comm 113.06 (2) is repealed.

SECTION 9. Comm 113.06 (4) (a) is amended to read:

**Comm 113.06 (4) (a)** Each issuer shall notify the department in writing as to the amount of obligations issued pursuant to the allocation within 5 business days after the issuance of bonds and as a part of the notification, make a payment by cash or cashiers check to the department equal to  $\frac{3}{10}$  one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

SECTION 10. Comm 113.07 (1) (k) is renumbered (m):

SECTION 11. Comm 113.07 (1) (k) is created to read:

(k) A written, signed commitment letter from a financial institution indicating a commitment to purchase or place the obligations upon delivery by the issuer.

SECTION 12. Comm 113.07 (1) (l) is created to read:

(l) Documents or information submitted with an application that contain trade secret information, social security or FEIN numbers, private financial information, or tax documents or information are not subject to public disclosure.

SECTION 13. Comm 113.07 (2) is amended to read

~~(2) Upon receipt of a completed prospect data sheet application, the department shall evaluate whether it meets the requirements of sub. (3) and score the application based upon a comparative ranking with other applications received. Comparative rankings shall be based upon the department's consideration of the factors in subs. (3) and (4). The department may establish a cutoff score for applications submitted to the council and the secretary for consideration and approval.~~

SECTION 14. Comm 113.07 (3) is amended to read:

(3) The council and the department may approve an allocation of the unified volume cap if they determine all of the following:

- (a) The project serves a public purpose.
- (b) The project will likely retain or increase employment in this state.
- (c) The project will likely positively affect an area's economic distress.

~~1. The unemployment rate in the area is higher than the state average for the 18 months immediately preceding the date on which the application under sub. (1) was submitted to the department.~~

~~2. The percentage of persons residing in the area who are members of households with household income levels at or below 80% of the statewide median household income is higher than the state average.~~

~~3. The percentage of households in the area receiving unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats. is higher than the state average.~~

~~4. In the 36 months immediately preceding the date on which the application under sub. (1) was submitted to the department, a number of workers in the area were permanently laid off by their employer or became unemployed as a result of a business action subject to s. 109.07 (1m), Stats.~~

~~5. An employer in the vicinity of the area has given public notice under s. 109.07 (1m), Stats. of either a business closing or a mass layoff of at least 25 employees, or 25% of the employees, of a business whichever is greater, that will result in a number of workers in the area being laid off permanently.~~

~~6. Property values in the area have been declining.~~

~~7. There has been a decline in the population in the area.~~

SECTION 15. Comm 113.07 (4) is amended to read:

(4) In making a determination under sub. (3), the council and the department shall consider all of the following:

(a) The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.

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

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

(d) The number of jobs that are likely to be retained or created as a result of the project.

~~(e) The number of jobs that are likely to be made available as a result of the project to persons who are recipients of unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats.~~

~~(e)~~ (e) The competitive effect of the allocation of unified volume cap on other businesses in the area.

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

~~(h)~~ (g) Whether the project will result in the redevelopment of a brownfield site.

~~(h)~~ (h) Whether the project is likely to occur or continue without allocation of the unified volume cap.

~~(h)~~ (i) Any other factors that the department and the council consider relevant.

(END)

FISCAL ESTIMATE  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Comm 113  
Amendment No. if Applicable

**Subject**

Rules relating to the allocation of volume cap on tax-exempt private activity bonds

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |   |

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| <input type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Decrease Costs  |                              |                             |

**Local:**  No local government costs

1.  Increase Costs  
 Permissive  Mandatory
2.  Decrease Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory
4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:

- |   |   |                                 |
|---|---|---------------------------------|
| <input type="checkbox"/> Towns            | <input type="checkbox"/> Villages       | <input type="checkbox"/> Cities |
| <input type="checkbox"/> Counties         | <input type="checkbox"/> Others         |                                 |
| <input type="checkbox"/> School Districts | <input type="checkbox"/> WTCS Districts |                                 |

**Fund Sources Affected**

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

This rule incorporates recent changes in the federal internal revenue code, which increases the state volume cap limits on tax-exempt private activity bonds, outlines the distribution of volume cap between the Building Commission, WHEDA and Commerce, and revises the allocation process.

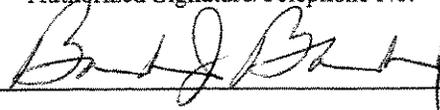
The rule eliminates the application fee and increases the bond-closing fee to cover the administration costs. The Department of Commerce anticipates that this rule will generate approximately \$144,000 in PR funds from the bond-closing fee to offset the administration of the program.

**Long-Range Fiscal Implications**

The administrative costs are re-evaluated annually.

Agency/Prepared by: (Name & Phone No.)  
William Wheeler 267-2045

Authorized Signature/Telephone No.



Date

4/23/01

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

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Comm 113

Amendment No.

**Subject**

Rules relating to the allocation of volume cap on tax-exempt private activity bonds

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs By Category</b>	\$	\$ -
State Operations - Salaries and Fringes		
(FTE Position Changes)	( FTE)	( - FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs By Category</b>	\$	\$ -
<b>B. State Costs By Source of Funds</b>	\$	\$ -
GPR		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>	\$	\$ -
GPR Taxes		-
GPR Earned		-
FED		-
PRO/PRS	144,000	-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	\$ 144,000	\$ -

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 144,000	\$ 0
NET CHANGE IN REVENUES	\$ 144,000	\$ 0

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

William Wheeler 267-2045

Authorized Signature/Telephone No.



Date

4/23/01



AUG 16 2001

P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD#: (608) 264-8777  
www.commerce.state.wi.us

Scott McCallum, Governor  
Brenda J. Blanchard, Secretary

August 16, 2001

Donald J. Schneider  
Senate Chief Clerk  
Room 501  
119 Martin Luther King Blvd  
Madison, Wisconsin 53703

John A. Scocos  
Assembly Chief Clerk  
Room 402  
1 East Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE  
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 01-070

RULE NO.: Chapter Comm 113

RELATING TO: Allocation of Volume Cap on Tax-Exempt Private Activity Bonds

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,



Brenda J. Blanchard  
Secretary



P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD#: (608) 264-8777  
www.commerce.state.wi.us

Scott McCallum, Governor  
Brenda J. Blanchard, Secretary

August 16, 2001

Senator Fred Risser  
President of the Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53702

Representative Scott Jensen  
Speaker of the Assembly  
Room 211 West, State Capitol  
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

### NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 01-070

RULE NO.: Chapter Comm 113

RELATING TO: Allocation of Volume Cap on Tax-Exempt Private Activity Bonds

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer 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,

Brenda J. Blanchard  
Secretary

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 01-070

RULE NO.: Chapter Comm 113

RELATING TO: Allocation of Volume Cap on Tax-Exempt Private Activity 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.

The proposed rules are not expected to have any impact on small businesses except for businesses located within the state that desire to obtain the economic benefit of industrial revenue bond financing using the volume cap allocated by the Department of Commerce.

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 by small businesses during the hearings.

*(Continued on reverse side)*

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

None.

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

None.

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.

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

None.

# RULE REPORT

## Department of Commerce

Rule No.: Comm 113

---

Relating to: Allocation of Volume Cap on Tax-Exempt Private Activity Bonds

---

*Agency contact person for substantive questions:*

Name William Wheeler

Title Director, Bureau of Enterprise Development

Telephone Number 608/267-2045

*Agency contact person for internal processing:*

Name Richard Meyer

Title Supervisor, Code Development Section

Telephone Number 608/266-3080

1. Agency statutory authority under which the agency intends to promulgate the rule(s).  
Sections 560.02 (4) and 560.032, Stats.
  
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).  
None known.
  
3. Citation of court decisions which are applicable to the proposed rule(s).  
None known.

4. Description of the proposed rule(s).

Pursuant to section 560.032, Stats., the Department of Commerce is responsible for administering the allocation of volume cap on tax-exempt private activity bonds. The proposed rule has been adopted as an emergency rule to incorporate into the administrative code recent changes to the Internal Revenue Code which increase state volume cap limits on tax-exempt private activity bonds. The year 2000 limit in the Internal Revenue Code was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002 the limit will be \$75.00; and thereafter the limit will be indexed to inflation. The rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and the Department of Commerce. The current rules are also being revised to provide an allocation process that will allow the Department of Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

5. Reason for the proposed rule(s).

The proposed rule has been developed in order to bring the Wisconsin administrative code in alignment with federal law so that businesses can take advantage of the increases in state volume cap limits on tax-exempt private activity bonds.

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 01-070

RULE NO.: Chapter Comm 113

RELATING TO: Allocation of Volume Cap on Tax-Exempt Private Activity Bonds

Agency contact person for substantive questions.

Name: Bill Wheeler

Title: Director, Bureau of Enterprise Development

Telephone No. 267-2045

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

*(Continued on reverse side)*

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



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

Clearinghouse Rule Number: 01-070		Hearing Location: Madison	
Rule Number: Chapter Comm 113		Hearing Date: July 16, 2001	
Relating to: Allocation of Volume Cap on Tax-Exempt Private Activity Bonds			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		No comments/recommendations were presented.	



State of Wisconsin \ Department of Commerce

# **RULES in FINAL DRAFT FORM**

**Rule No.:** Chapter Comm 113

**Relating to:** Allocation of Volume Cap on Tax-Exempt  
Private Activity Bonds

**Clearinghouse Rule No.:** 01-070

The Department of Commerce proposes an order to repeal ss. Comm 113.02(1), Comm 113.041, Comm 113.06(2), Comm 113.07(3)(c)1. to 7. and (4)(e), and Comm 113.08(1)(a)3.; to renumber ss. Comm 113.02(2), Comm 113.07(1)(k), Comm 113.07(4)(f) to (j), and Comm 113.08(1)(a)4.; to renumber and amend s. Comm 113.06(1); to amend ss. Comm 113.02(8)(b), Comm 113.05(1)(b), Comm 113.06(4)(a), Comm 113.07(2), and Comm 113.08(2); to repeal and recreate s. Comm 113.03; and to create ss. Comm 113.02(2), Comm 113.02(19), Comm 113.06(1)(b) to (e), Comm 113.07(1)(k), and Comm 113.07(1m), relating to the allocation of volume cap on tax-exempt private activity bonds.

\*\*\*\*\*

**Analysis of Proposed Rules**

Statutory Authority: ss. 560.02(4) and 560.032, Stats.

Statutes Interpreted: s. 560.032, Stats.

Pursuant to section 560.032, Stats., the Department of Commerce is responsible for administering the allocation of volume cap on tax-exempt private activity bonds. The proposed rule has been adopted as an emergency rule to incorporate into the administrative code recent changes to the Internal Revenue Code which increase state volume cap limits on tax-exempt private activity bonds. The year 2000 limit in the Internal Revenue Code was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002 the limit will be \$75.00; and thereafter the limit will be indexed to inflation. The rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and the Department of Commerce. The current rules are also being revised to provide an allocation process that will allow the Department of Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

\*\*\*\*\*

SECTION 1. Comm 113.02 (1) is repealed.

SECTION 2. Comm 113.02 (2) is renumbered (1).

SECTION 3. Comm 113.02 (2) is created to read:

**Comm 113.02 (2)** "Brownfields" has the meaning assigned to that term in s. 560.13 (1) (a), Stats.

SECTION 4. Comm 113.02 (8) (b) is amended to read:

**Comm 113.02 (8) (b)** Any agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including ~~the authority~~ WHEDA and any other public corporation or commission established by or on behalf of these entities.

SECTION 5. Comm 113.02 (19) is created to read:

**Comm 113.02 (19)** "WHEDA" means the Wisconsin Housing and Economic Development Authority.

SECTION 6. Comm 113.03 is repealed and recreated to read:

**Comm 113.03 Allocation to WHEDA.** (1) There is allocated annually to WHEDA 50% of the base level established by the total amount of unified volume cap for the year 2000, less the \$10 million set aside for the building commission, plus a percentage of the total increase above that base in volume cap as follows: 2001 (75%), 2002 (70%), 2003 (65%), 2004 (60%). In the year 2005, and thereafter, WHEDA shall be allocated 50% of the total amount of unified volume cap less the amount allocated to the building commission under s. Comm 113.04.

(2) The volume cap allocated to WHEDA shall be further allocated to local issuers by WHEDA under sub. (3) or utilized by WHEDA for single-family housing bonds, multi-family housing bonds and beginning farmer bonds. WHEDA shall certify to the department promptly after issuance of any private activity bonds the total amount of the bonds issued pursuant to this allocation.

(3) From the volume cap allocated under sub. (2), WHEDA shall, until October 1 each year, set aside \$15 million in volume cap for local issuers of multi-family housing bonds pursuant to guidelines established by WHEDA and approved by the department. WHEDA shall consider requests in excess of the set aside until October 1 each year.

SECTION 7. Comm 113.041 is repealed.

SECTION 8. Comm 113.05 (1) (b) is amended to read:

**Comm 113.05 (1) (b)** The executive director of ~~the authority~~ WHEDA or the executive director's designee.

SECTION 9. Comm 113.06 (1) is renumbered Comm 113.06 (1) (a) and amended to read:

**Comm 113.06 Department's allocation; allocation process.** (1) (a) There is allocated to the department the remainder of the annual unified volume cap, including any amount that is surrendered, transferred or terminated under s. Comm 113.04, or 113.06 (6), ~~or 113.07 (6)~~, which shall be allocated for issuer-owned project bonds, economic development bonds and other private activity bonds, but not for single family housing bonds or multi-family housing bonds. In the year 2005 and thereafter, for any unified volume cap transferred under s. Comm 113.04, the department shall allocate 50% of the volume cap to WHEDA. The department will annually develop an allocation plan, which may include but not be limited to specific set-asides for exempt environmental projects and specific targeted industries identified in the allocation plan.

Note: The allocation plan is available from the department at the Community Development Division, P.O. Box 7970, Madison, WI 53707-7970, telephone (608) 267-2045.

SECTION 10. Comm 113.06 (1) (b) to (e) are created to read:

**Comm 113.06 (1) (b)** The department shall conduct a review and evaluation of each project in accordance with the annual allocation plan. The business shall submit through a commerce area development manager a completed prospect data sheet.

Note: The prospect data sheet is available from the department at the Community Development Division, P.O. Box 7970, Madison, WI 53707-7970, telephone (608) 267-2045.

Note: Information relating to the Commerce Area Development Manager is available on the Commerce website at [www.commerce.state.wi.us/MT/MT-COM-2000.html](http://www.commerce.state.wi.us/MT/MT-COM-2000.html) or by contacting the department at 1-800-435-7287.

(c) The department shall evaluate the project based upon the following:

1. The project serves a public purpose.
2. The project will likely retain or increase employment in this state.
3. The project will likely positively affect an area's economic distress.

(d) In making a determination, the council and the department shall consider all of the following:

1. The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.
2. The prospects for new investment and economic development in the area.

3. The amount of investment that is likely to result from the project.
4. The number of jobs that are likely to be retained or created as a result of the project.
5. The competitive effect of the allocation of unified volume cap on other businesses in the area.
6. Whether the project will result in dislocation of a business from one municipality to another.
7. Whether the project will result in the redevelopment of a brownfield site.
8. Whether the project is likely to occur or continue without allocation of the unified volume cap.
9. The financial soundness of the business.
10. The ability of the eligible recipient to repay the bond.
11. Any other factors that the department considers relevant.

(e) If a determination is made to recommend the project for an allocation of volume cap, the department will send a proposal letter to the business indicating the amount of volume cap and any other conditions that the department has determined must be met. If the business accepts the proposal in writing, the business may then proceed with the volume cap allocation process on behalf of the issuer in accordance with s. Comm 113.07.

SECTION 11. Comm 113.06 (2) is repealed.

SECTION 12. Comm 113.06 (4) (a) is amended to read:

**Comm 113.06 (4) (a)** Each issuer shall notify the department in writing as to the amount of obligations issued pursuant to the allocation within 5 business days after the issuance of bonds and as a part of the notification, make a payment by cash or cashier's check to the department equal to ~~3~~ 10 one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

SECTION 13. Comm 113.07 (1) (k) is renumbered Comm 113.07 (1) (L).

SECTION 14. Comm 113.07 (1) (k) is created to read:

**Comm 113.07 (1) (k)** A written, signed commitment letter from a financial institution indicating a commitment to purchase or place the obligations upon delivery by the issuer.

SECTION 15. Comm 113.07 (1m) is created to read:

**Comm 113.07 (1m)** Documents or material submitted with an application that contain trade secret information, social security or federal employer identification numbers, private financial information, or tax documents or information shall have that information deleted before public disclosure.

SECTION 16. Comm 113.07 (2) is amended to read:

**Comm 113.07 (2)** Upon receipt of a completed prospect data sheet ~~an application~~, the department shall evaluate whether it meets the requirements of sub. (3) ~~and score the application based upon a comparative ranking with other applications received. Comparative rankings shall be based upon the department's consideration of the factors in subs. (3) and (4). The department may establish a cutoff score for applications submitted to the council and the secretary for consideration and approval.~~

SECTION 17. Comm 113.07 (3) (c) 1. to 7. are repealed.

SECTION 18. Comm 113.07 (4) (e) is repealed.

SECTION 19. Comm 113.07 (4) (f) to (j) are renumbered Comm 113.07 (4) (e) to (i).

SECTION 20. Comm 113.08 (1) (a) 3. is repealed.

SECTION 21. Comm 113.08 (1) (a) 4. is renumbered Comm 113.08 (4) (a) 3.

SECTION 22. Comm 113.08 (2) is amended to read:

**Comm 113.08 (2)** On the department's last working day of the year, the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers. The department shall assign that portion to ~~the authority~~ WHEDA with direction to ~~the authority~~, WHEDA to make an election, pursuant to any applicable income tax regulations promulgated pursuant to 26 USC 146, to carry forward the portion for any carry forward purpose.

(END)

\*\*\*\*\*

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

\*\*\*\*\*