

Clearinghouse Rule 09-121

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 136 relating to allocation of the Midwestern disaster area bonding authority provided to Wisconsin under the federal Heartland Disaster Tax Relief Act of 2008, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.03.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.03.

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 560.03 of the Statutes authorizes and directs the Department to assist in implementing economic and community development programs, and to perform such other functions as the Governor may direct for aiding industrial development.

4. Related Statute or Rule.

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

5. Plain Language Analysis.

The rules in this order would establish 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.

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

In the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), subtitle A of title VII is the Heartland Disaster Tax Relief Act of 2008 (HDTRA). HDTRA modified section 1400N(a) of the Internal Revenue Code of 1986 to establish tax-exempt Qualified Midwestern Disaster Area (MDA) bonds for areas that in 2008 were declared by the President as being major disaster areas because of severe storms, tornados or flooding. HDTRA limits the aggregate face amount of bonds that may be designated as MDA bonds. HDTRA also delegates to the Governor the power to make certain designations in connection with the issuance of MDA bonds, including designation of the bonds as MDA bonds and designation of a trade or business as replacing another trade or business for these purposes.

7. Comparison With Rules in Adjacent States.

Although each of the adjacent states are listed in HDTRA as having areas eligible for MDA bonds, an Internet-based search produced corresponding administrative rules only in Iowa. Those rules and related information, by the Iowa Finance Authority, are available at http://www.iowafinanceauthority.gov/en/economic_development/midwestern_disaster_area_bonds/.

Highlights of the Iowa rules include the following:

- Through December 2009, \$2,000,000,000 of Iowa's allocation of MDA bonds will be apportioned based on the amount of damage suffered by each county, and based on FEMA allocations of housing assistance. The remaining \$615,995,000 of Iowa's allocation will be available to all eligible projects. After December 2009, any remaining MDA bonds will be available to all eligible projects. MDA bonds will be allocated on a first-come, first-served basis. Applications are received on a continuous basis.
- An application must be completed and submitted to the Governor's designee by the borrower, or an agent acting on behalf of the borrower. Applications may be submitted at any time after an inducement resolution for the project has been adopted. A fee of two basis points (.02%) of the amount of MDA bonds for which an application is made must be paid by the applicant upon filing the application.
- A Certification of Allocation is sent to the applicant when an allocation is made. Allocations are valid for 150 days. After the bonds are issued, a representative of the borrower must complete and return a Notice of Issuance and Delivery of Bonds within 10 days of the delivery date for the bonds.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and included (1) reviewing the criteria in HDTRA and in Executive Order #288 as issued by Governor Jim Doyle; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

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 HDTRA and Executive Order #288.

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 are designed to facilitate the recovery and rebuilding of areas which were declared major disaster areas in 2008.

11. Agency Contact Person.

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12. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wi.gov, no later than January 29, 2010. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 136/rules, analysis-p