

Clearinghouse Rule 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 sections 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 sections 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.

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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 May 17, 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 137/rules, analysis-p