

# RULES CERTIFICATE

Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, William J. McCoshen, Secretary of the Department of Commerce,  
and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to  
Annual Allocation of Volume Cap on Tax-Exempt Private Activity Bonds for 1997  
(Subject)

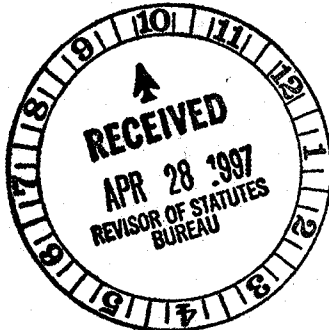
were duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the department and  
that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set

my hand at 8:30 am.  
in the city of Madison, this 25th  
day of April A.D. 19 97

Thomas H. Taylor Deputy Secretary  
Secretary







State of Wisconsin \ Department of Commerce

# **RULES in FINAL DRAFT FORM**

**Rule No.:** DOD 13 and Comm 113

**Relating to:** Annual Allocation of Volume Cap on Tax-Exempt  
Bonds for 1997

**Clearinghouse Rule No.:** 97-004

## DEPARTMENT OF COMMERCE

### RULE RELATING TO THE ANNUAL ALLOCATION OF VOLUME CAP ON TAX-EXEMPT PRIVATE ACTIVITY BONDS FOR 1997

The Department of Commerce (formerly Development) hereby proposes to adopt a rule to repeal and create ch. Comm 113, relating to the annual allocation of volume cap for calendar year 1998.

#### Analysis of Rules

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

Statutes Interpreted: s. 560.032, Stats.

Section 560.032, Stats. requires the Department of Commerce to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This order establishes a volume cap allocation system for calendar year 1997.

On December 30, 1996, the Department adopted and published an emergency rule relating to the annual allocation of volume cap for calendar year 1997. That emergency rule repealed former Wisconsin Administrative Code ch. DOD 13, administered by the former Department of Development, and simultaneously created chapter Comm 113, administered by the Department of Commerce. The Department held a public hearing on the adoption of the emergency rule and the permanent rule on February 13, 1997. Based on public hearing testimony, the Department has decided to adopt the emergency rule as a permanent rule and is in the process of completing the rulemaking activities in accordance with chapter 227, Stats.

The private activity bonding available under the volume cap in Wisconsin during calendar year 1997 is approximately \$258 million. Of that total, the rules provide under this order that \$125 million will be allocated to the Wisconsin Housing and Economic Development Authority (WHEDA), including \$45 million that previously was set aside and held by the Department of Development for local issuers for multi-family housing; \$10 million will be allocated to the State Building Commission; and, the remaining \$119 million will be allocated to the Department of Commerce to be distributed to local issuers for a variety of economic development and other projects.

This order is similar to the rule for 1996 with the following key exceptions:

1. The allocation for WHEDA is increased from \$105 million to \$125 million. Any allocation for which bonds have not been issued by September 1 will be retained by WHEDA.

2. WHEDA's \$125 million allocation includes the \$45 million allocation that, in previous years, was set aside and held by the former Department of Development for local issuers for multi-family housing. WHEDA traditionally has allocated approximately \$25 million of its \$105 million in volume cap for economic development projects under its Business Development Bond (BDB) program; the remaining \$80 million in volume cap has been used for single and multi-family housing bonds. WHEDA has informed the Department of Commerce that it will be focussing greater emphasis on single and multi-family housing, and it will assume responsibility for allocating up to \$45 million in volume cap to local issuers for multi-family housing projects pursuant to guidelines adopted by WHEDA.

3. Pursuant to s. Comm 113.06(2), the Department of Commerce will charge the following application fees to cover the cost of processing applications for volume cap: \$500 for smaller economic development bond issues that are \$2 million or less; and \$1,000 for all other projects. It is anticipated that these fees will be paid by the businesses which utilize the Department's allocation of volume cap.

4. The Department of Commerce is creating an advisory new Volume Cap Allocation Council under s. 15.04(1)(c), Stats., to consider applications and make recommendations to the secretary as to the allocation of volume cap among different economic development projects based upon merit, as well as distress in the vicinity of the project. The council will include the secretary of the department, the executive director of WHEDA, and up to three additional members appointed by the secretary. Council meetings will be conducted in compliance with s. 19.83, Stats.

5. In light of the heavy demand for volume cap during the last several years, volume cap will no longer be allocated on a first-come, first-serve basis. Instead, volume cap will be allocated based upon the merits of each project. Factors that will be considered by the department and the council will include, without limitation, the total number of jobs to be created or retained, the wages and benefits to be provided to new and existing employees, the total amount of investment in real estate improvements and capital equipment, and the level of distress in the vicinity of the project. An allocation of the unified volume cap may be approved if the department determines that the project serves a public purpose, the project will likely retain or increase employment in this state, the project is not likely to occur or continue without allocation of the unified volume cap, and the project will likely positively affect an area that meets at least 2 of the following criteria:

(a) 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.

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

(c) 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.

(d) 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.

(e) 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 percent of the employees, of a business whichever is greater, that will result in a number of workers in the area being laid off permanently.

(f) Property values in the area have been declining.

(g) There has been a decline in the population in the area.

6. Under s. Comm 113.06(9), if a project is located in the territory of more than one municipality, a municipality in which a portion of the project will be located may apply for volume cap and then assign its volume cap to the municipality which will act as issuer for the bonds relating to the project. The purpose of this new subsection is to minimize the need for municipalities to undertake multiple bond issues in connection with a project that is located within the boundaries of more than one municipality.

The rule for 1997 provides an allocation formula that will address the bonding needs of the state and local issuing authorities. Further, it will provide a more efficient and effective use of the state's annual volume cap allocation.

#### **Contact Person**

Thomas H. Taylor, Deputy Secretary, Department of Commerce, 608/266-3203.

**Text of Rule**

Pursuant to the authority vested in the Department of Commerce by ss. 560.02(4) and 560.032, Stats., the Department of Commerce hereby repeals ch. DOD 13 and creates ch. Comm 113, interpreting s. 560.032, Stats., as follows:

**SECTION 1.** Chapter DOD 13 is repealed.

**SECTION 2.** Chapter Comm 113 is created to read:

**Chapter Comm 113**

**ALLOCATION OF VOLUME CAP  
ON TAX-EXEMPT PRIVATE ACTIVITY BONDS  
FOR CALENDAR YEAR 1997**

- Comm 113.01 Purpose
- Comm 113.02 Definitions
- Comm 113.03 Allocation to the authority.
- Comm 113.04 Building commission allocation
- Comm 113.05 Volume cap allocation council
- Comm 113.06 Department allocation; allocation process.
- Comm 113.07 Applications; criteria for allocation of volume cap
- Comm 113.08 Carry forward allocation
- Comm 113.09 Department certification
- Comm 113.10 Designation of interest earned

**Comm 113.01 PURPOSE.** The purpose of this chapter is to establish a procedure for calendar year 1997 relating to the annual allocation of volume cap for tax-exempt "private activity bonds" that may be issued by Wisconsin issuers pursuant to the internal revenue code of 1986, 26 USC 146.

**Comm 113.02 DEFINITIONS.** In this chapter:

- (1) "Authority" means the Wisconsin housing and economic development authority.
- (2) "Beginning farmer bonds" means bonds or notes authorized under s. 234.66, Stats.
- (3) "Carry forward purpose" has the meaning assigned to that term in 26 USC 146 (f) (5).
- (4) "Code" means the internal revenue code of 1986, as amended.

- (5) "Council" means the advisory volume cap allocation council established by the department under s. 15.04 (1) (c), Stats. and s. Comm 113.05.
- (6) "Department" means the department of commerce.
- (7) "Economic development bonds" means bonds described in 26 USC 142(a), 144(a) and 144(c). "Economic development bonds" does not include multi-family housing bonds.
- (8) "Issuer" means:
- (a) Any municipality.
- (b) Any agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including the authority and any other public corporation or commission established by or on behalf of these entities.
- (c) For purposes of s. Comm 113.06 (2), any person acting for or on behalf of the entities listed in par. (a) or (b).
- (9) "Issuer-owned project bonds" means bonds issued for a facility that is owned by an issuer, would be treated as owned by the issuer pursuant to 26 USC 142 (b) (1) (B), and is described in 26 USC 142 (a) (1) to (11). It does not include single-family housing bonds but does include multi-family housing bonds.
- (10) "Multi-family housing bonds" means bonds issued for a qualified residential rental project, as defined in 26 USC 142 (a) (7) and 142 (d).
- (11) "Municipality" has the meaning assigned to that term in s. 67.01(5), Stats.
- (12) "Other private activity bonds" means private activity bonds other than those certified to the department as issuer owned project bonds, multi-family housing bonds or single-family housing bonds.
- (13) "Private activity bonds" has the meaning assigned to that term in 26 USC 141 (a).
- (14) "Project" means any issuer-owned project, multi-family housing project, or economic development project for which private activity bonds may be issued under applicable federal law.
- (15) "Qualified redevelopment bonds" has the meaning assigned to that term in 26 USC 144 (c).



(16) "Single-family housing bonds" means qualified mortgage bonds as defined in 26 USC 143 (a).

(17) "Small economic development bonds" means any economic development bond issue where the aggregate face amount to be issued is \$2 million or less.

(18) "Unified volume cap" means the annual state ceiling for the issuance of private activity bonds applicable to the state of Wisconsin.

**NOTE:** The "unified volume cap" is determined according to 26 USC. 146 (d) (1) and (2). It is an amount equal to the prior year census estimate of the resident population of the state of Wisconsin released by the bureau of census multiplied by \$50 per person.

**Comm 113.03 ALLOCATION TO THE AUTHORITY.** (1) There is allocated annually to the authority \$125 million of the unified volume cap to be further allocated to local issuers by the authority under sub. (2) or utilized by the authority for single-family housing bonds, multi-family housing bonds and beginning farmer bonds. The authority shall certify to the department promptly after issuance of any private activity bonds the total amount of the bonds issued pursuant to this allocation.

(2) From the volume cap allocated under sub. (1), the authority shall allocate up to \$45 million in volume cap to local issuers for multi-family housing bonds pursuant to guidelines established by the authority and approved by the department.

**Comm 113.04 BUILDING COMMISSION ALLOCATION.** There is allocated annually to the state building commission \$10 million of the unified volume cap to be further allocated by the building commission and utilized for any private activity bonds as the building commission in its discretion shall determine are needed. Any amount of the allocation for which bonds have not been issued by September 1 each year shall be automatically transferred to the department to be further allocated as provided in ss. Comm 113.06, 113.07 and 113.08. The building commission shall promptly certify to the department, on September 1 each year, the amount of unused allocation.

**Comm 113.05 VOLUME CAP ALLOCATION COUNCIL.** (1)  
Pursuant to s. 15.04 (1) (c), Stats., there is created the volume cap allocation council attached to the department consisting of all of the following:

- (a) The secretary of the department or the secretary's designee.
- (b) The executive director of the authority or the executive director's designee.
- (c) Up to 3 additional members appointed by the secretary of the department for 2-year terms.

(2) The council shall evaluate applications and make recommendations to the secretary of the department relating to the allocation of volume cap among applicants pursuant to s. Comm 113.07. The secretary of the department shall make final decisions on the allocation of volume cap.

**Comm 113.06 DEPARTMENT'S ALLOCATION.** (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, 113.06 (6) or 113.06 (7), 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.

(2) Any issuer may submit an application to the department for an allocation of the unified volume cap in connection with a project. An application shall be accompanied by a non-refundable application fee of \$500 for small economic development bonds and \$1,000 for all other projects. An applications shall include all of the information required under s. Comm 113.07 (1).

(3) If the department approves an application under s. Comm 113.07, the department shall promptly certify a portion of its allocation of the unified volume cap that has not been allocated to an issuer and shall allocate the approved portion of the amount requested to the issuer. The allocation shall be valid for a period equal to the lesser of 90 calendar days or the remainder of the calendar year. The amount of the allocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain allocations are subject to earlier termination pursuant to subs. (6) and (7). Any allocation under this section shall be valid only with respect to bonds issued in the same calendar year. Any allocations for a carryforward purpose shall be obtained under the provisions of s. Comm 113.08.

(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 the bonds and as part of the notification, make a payment by cash or cashiers check to the department equal to 3-one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

(b) Upon notification and payment under par. (a), the allocation in the amount issued shall, subject to par. (c), become permanent and irrevocable.

(c) The department shall treat any notice received pursuant to this subsection more than 5 business days after the issuance of the bonds as a reapplication pursuant to this chapter.

(5) An application shall be made only within 90 calendar days prior to the planned issuance of the bond.

(6) An issuer may surrender to the department all or any part of its rights to a particular allocation under any section of this chapter prior to its expiration. Upon surrender of all or any part of an issuer's allocation, the allocation shall expire.

(7) (a) Unless the department has received notice of the issuance of bonds pursuant to sub. (4) or a deposit of cash or a certified or cashier's check in an amount equal to .5 percent of the allocation requested, if requested prior to October 1, and one percent if requested on October 1 or thereafter, any allocation shall terminate on the earlier of 30 days after the allocation is made or December 1. No additional deposit may be required with respect to an allocation made upon reapplication if the required deposit has already been made, and not refunded, with respect to the project.

(b) 1. Subject to subd. 2., the deposit shall be refunded, without interest, if prior to January 1 of the succeeding year bonds are issued by the issuer pursuant to the allocation or to an allocation made upon reapplication.

2. A ratable portion of the deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds may not be refunded.

3. Any deposits, or portions of the deposits, which have not become refundable pursuant to subs. 1. and 2. as of the fifth business day of the succeeding year shall vest in the state of Wisconsin to be used as provided by law.

4. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonably require, is furnished to the department.

(8) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be \$1,000 for each \$5 million of allocation or portion of \$5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(9) If a project is located in the territory of more than one municipality, a municipality in which a portion of the project will be located may apply for volume cap and then assign its volume cap to the municipality which will act as issuer for the bonds relating to the project.

**Comm 113.07 APPLICATION PROCESS; CRITERIA.** (1) An application to the department for an allocation of the unified volume cap shall include all of the following:

(a) The name and address of the issuer.

(b) A description of the project.

- (c) The name and address of the person that proposes to invest in the project.
  - (d) The amount that the person proposes to invest in the project.
  - (e) The total investment in the project.
  - (f) The total number of jobs that will be created, retained or substantially upgraded in connection with the project.
  - (g) The average wages and benefits that will be provided to persons hired as a result of the project.
  - (h) The person's plans to make reasonable attempts to hire employees who are recipients of unemployment compensation under ch. 108, Stats., or relief funded by a relief block grant under ch. 49, Stats.
  - (i) Evidence that official action has been taken by the issuer with respect to the issuance of the obligation which, for obligations issued pursuant to s. 66.521, Stats., shall be the initial resolution previously filed with the department with respect to the obligation.
  - (j) A written, signed opinion of the issuer's legal counsel or bond counsel, certifying that the obligations qualify as private activity bonds subject to the unified volume cap and stating whether the bonds qualify as issuer-owned project bonds, qualified redevelopment bonds, or other private activity bonds.
  - (k) Any other information required by the department.
- (2) Upon receipt of an application, the department shall evaluate whether it meets the requirements of subs. (1) and (3), and it shall 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 of the department for consideration and approval.
- (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 that meets at least 2 of the following criteria:

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 percent 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 percent 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.

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

- (g) Whether the project will result in dislocation of a business from one municipality to another.
  - (h) Whether the project will result in the redevelopment of a brownfield site.
  - (i) Whether the project is likely to occur or continue without allocation of the unified volume cap.
  - (j) Any other factors that the department and the council consider relevant.
- (5) The council and the department may not approve an allocation in excess of \$5 million for any project unless they determine that the utilization is in the best interests of the people of the state of Wisconsin. In making a determination under this subsection, the council and the department shall consider all of the following:
- (a) The needs of other areas of the state.
  - (b) The amount of unified volume cap requested by and available to other issuers.
  - (c) Any other factors that the department and the council consider relevant.

**Comm 113.08 CARRY FORWARD ALLOCATION PROCESS.** (1) (a)

On the department's next to 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 and shall then make allocations only for carry forward purposes. No allocation for carry forward purposes may be made pursuant to this subsection prior to that date. Any requests shall be considered by the department in the order received, and a request shall be deemed not to have been received if an allocation has been made and not surrendered with respect to the same project or portion of the project. An allocation may be made by the department to any issuer that has done all of the following:

1. Requested an allocation for a carry forward purpose.
2. Provided the department with information as is requested by the department and approved by the department as showing that an effective election can be made by the issuer under the federal tax reform act of 1986 and any applicable income tax regulations promulgated pursuant to 26 USC 146.
3. Paid to the department the application fee required by s. Comm 113.06 (2).

4. Paid to the order of the department a deposit of immediately available funds or a certified or cashier's check in an amount equal to one percent of the amount of the allocation requested.

(b) The deposit paid under par. (a) 4. shall be refunded, without interest, if bonds are issued by the issuer on or before December 31 of the third succeeding year, for the carry forward purpose indicated in the application for the allocation, provided that an amount of a deposit equal to one percent of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonably require, is furnished to the department.

(c) Any deposits under s. Comm 113.06 shall not be credited toward the deposit under this subsection.

(d) Any deposits or portions of the deposits which have not become refundable pursuant to par. (b) as of January 1 of the fourth succeeding year shall vest in the state of Wisconsin to be used as provided by law.

(e) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be \$1,000 for each \$5 million of allocation or portion of \$5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(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 with direction to the authority 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.

**Comm 113.09 DEPARTMENT CERTIFICATION.** At the request of an issuer that has complied with all of the provisions of this chapter and that received an allocation, the department shall certify that the bond issue meets the requirements of 26 USC 146.

**Comm 113.10. DESIGNATION OF INTEREST EARNED.** Any interest earned upon investment of amounts deposited under this chapter shall inure to the state of Wisconsin for the benefit of the people of the state of Wisconsin, to be used as provided by law.

(END)

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

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123 West Washington Avenue  
P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018

Tommy G. Thompson, Governor  
William J. McCoshen, Secretary

April 25, 1997

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 West Wilson Street  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 97-004

RULE NO.: DOD 13 and Comm 113

RELATING TO: Annual Allocation of Volume Cap on Tax-Exempt Private Activity Bonds for 1997

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

for: *Thomas H. Taylor, Deputy Secretary*  
William J. McCoshen  
Secretary