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CAROL OWENS

WISCONSIN STATE REPRESENTATIVE

TO: Assembly Committee on Housing Members

FROM: Representative Carol Owens, Chairperson

DATE: April 21, 1997

RE: CLEARINGHOUSE RULE 97-026

On April 17, 1997, the following rule was referred to the Assembly Committee on Housing:

Clearinghouse Rule 97-026, relating to the annual allocation of volume cap on tax-exempt bonds for 1998.

Please contact my office if you would like a copy of this rule. The deadline for committee action on this rule is **May 16, 1997**. If you are interested in requesting a hearing or submitting comments on this rule, please do so prior to the deadline date.

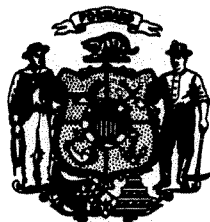
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CLEARINGHOUSE REPORT TO AGENCY

[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 97-026

AN ORDER to repeal and recreate chapter Comm 113, relating to the annual allocation of volume cap for calendar year 1998.

Submitted by **DEPARTMENT OF COMMERCE**

02-26-97 RECEIVED BY LEGISLATIVE COUNCIL.

03-26-97 REPORT SENT TO AGENCY.

RNS:GAA:kjf;jt

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)]

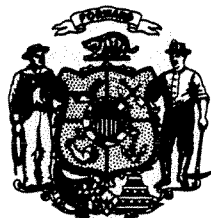
Comment Attached YES NO

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CLEARINGHOUSE RULE 97-026

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 October 1994.]

2. Form, Style and Placement in Administrative Code

a. If Clearinghouse Rule 97-026 is promulgated after Clearinghouse Rule 97-004, Clearinghouse Rule 97-026 should repeal and recreate ch. Comm 113, rather than repealing ch. DOD 13 and creating ch. Comm 113.

Also, the rule could be simplified by merely repealing and recreating those portions of ch. Comm 113 that allocate the volume cap, rather than repealing and recreating the entire chapter.

b. In the department's analysis, the second full paragraph states that the 1998 rule is "identical" to the 1997 rule. However, the last paragraph of the analysis states that it is "substantially the same." This should be clarified.

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

Section Comm 113.07 (5) refers to termination of allocations "... pursuant to subs. (6) and (8)." However, there is no sub. (8) in s. Comm 113.07 and sub. (6) relates to approval of an allocation in excess of \$5 million. Is the correct cite s. Comm 113.06 (6) and (8)?



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

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

April 7, 1997

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

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.: 97-026

RULE NO.: Comm 113

RELATING TO: Annual Allocation of Volume Cap on Tax-Exempt Bonds for 1998

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,

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



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

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

April, 7, 1997

Senator Fred Risser
President of the Senate
119 Martin L. King Blvd, Rm 102
Madison, Wisconsin 53702

Representative Ben Brancel
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Brancel:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 97-026

RULE NO.: Comm 113

RELATING TO: Annual Allocation of Volume Cap on Tax-Exempt Bonds for 1998

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,

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

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 97-026

RULE NO.: Comm 113

RELATING TO: Annual Allocation of Volume Cap on Tax-Exempt Bonds for 1998

Final regulatory flexibility analysis not required. (Statement of determination required.)

The proposed rule is 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. At a similar proThe Small Business Ombudsman attended the public hearing and provided written testimony in support of the rule and indicated that the rule would not negatively impact small business.

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 Small Business Ombudsman supports adoption of the rule and beleives the proposed rule is an improvement over the former rule and is more equitable, especially for small business.

She beleives that the distribution of the annual allocation for private activity bonds under the former rule through a first-come, first-serve basis was limiting and resulted in the rapid depletion of funds.

The Small Business Ombudsman supports the merit system delineated in the proposed rule because it results in competition. She indicated that small businesses with projects of economic value should score well under the the evaluation criteria, such as quality of wages, investment per volume cap request, environmental, and other factors. She also indicated that the two tier application fee makes reaonable allowances for small business.

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 business at public hearings on the proposed rules.

(Continued on reverse side)

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

The application fee for small projects is \$500. No comments were received from small business. The Small Business Ombudsman indicated that the two-tier application fee makes reasonable allowances for small business.

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

No special costs or investments, other than the application fee, was identified in this proceeding.

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.

The agency has adopted a two-tier application fee that takes into account the work in processing smaller projects, which amounts to a lesser cost for small business.

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

None.



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Comm 113

Relating to: Annual Allocation of Volume Cap on Tax-Exempt
Bonds for 1998

Clearinghouse Rule No.: 97-026

DEPARTMENT OF COMMERCE

RULE RELATING TO THE ANNUAL ALLOCATION OF VOLUME CAP ON TAX-EXEMPT PRIVATE ACTIVITY BONDS FOR 1998.

The Department of Commerce (formerly Development) hereby proposes to adopt a rule to repeal and recreate 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 complies with that statutory mandate by establishing a volume cap allocation system for calendar year 1998. Without this order, the availability of the annual volume cap for Wisconsin would be uncertain.

This proposed rule should not be confused with the emergency rule and permanent rule that the Department adopted and is adopting relating to the annual allocation of volume cap for calendar year 1997. In that regard, the Department adopted and published an emergency rule on December 30, 1996 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 as a 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. Based on the favorable comments received at the public hearing and in order to complete the rulemaking process outlined in chapter 227, Stats. by October 31, 1997, as required by sec. 560.032, Stats., the Department has decided to begin the promulgation process for a rule for the calendar year starting on January 1, 1998.

The private activity bonding available under the volume cap in Wisconsin during calendar year 1997 is approximately \$258 million. The volume cap for calendar year 1998 will be based upon Wisconsin's 1997 population and should be somewhat higher. Of the 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, during 1996 and previous years, 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 substantially the same as the emergency rule and the permanent rule that the department has adopted and is adopting for calendar year 1997. As such, the rule for calendar year 1998 provides for an allocation formula that will address the bonding needs of the state and local issuing authorities. Further, it will provide an efficient and effective use of the state's annual volume cap allocation, and thus, will provide all eligible users with the opportunity to obtain an allocation based upon the merit of their projects, as well as distress in the vicinity of a project.

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 and recreates ch. Comm 113, interpreting s. 560.032, Stats., as follows:

SECTION 1. Chapter Comm 113 is repealed and recreated to read:

Chapter Comm 113

ALLOCATION OF VOLUME CAP ON TAX-EXEMPT PRIVATE ACTIVITY BONDS FOR CALENDAR YEAR 1998

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	Application process: 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 1998 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; 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, 113.06 (5), 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.

(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 nonrefundable application fee of \$500 for small economic development bonds and \$1,000 for all other projects. An application shall include all of the information required under s. Comm 113.07 (1).

(3) If the department approves an application under this section, 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 carry forward 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 cashier's 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 subds. 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 FOR VOLUME CAP. (1)

An application to the department for an allocation of the unified volume cap shall include all of the following:

(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 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.

(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) If the council and the department approve an application under this section, 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 ss. Comm 113.06 (6) and (7). Any issue under this section shall be valid only with respect to bonds issued in the same calendar year.

(6) 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)

Pursuant to s. 227.22 (2) (b), Stats., these rules shall take effect on January 1, 1998.
