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Scott McCallum, Governor  
Brenda J. Blanchard, Secretary

August 20, 2001

Senator Judith Robson  
Co-Chairman  
Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
Madison, WI 53707-7882

Representative Glenn Grothman  
Co-Chairman  
Joint Committee for Review of Administrative Rules  
Room 125 West, State Capitol  
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

As you know, the Department adopted an emergency rule on April 23, 2001, amending certain provisions of ch. Comm 113 relating to the allocation of volume cap on tax-exempt private activity bonds taking into account recent changes in federal law. The emergency rule will expire on September 23, 2001, unless an extension is granted.

Since adoption, the Department submitted the rule to the Wisconsin Legislative Council and held a hearing on the emergency rule. Subsequently, the Department has filed a rule in final draft form (Clearinghouse Rule Number 01-070) for legislative review. However, legislative review will not be completed and the Department will not be in a position to adopt the permanent rule and have it in effect before the emergency rule is set to expire on September 23, 2001.

The Joint Committee for Review of Administrative Rules (JCRAR) requests that agencies make formal extension requests in advance of the expiration of an emergency rule. In light of these facts, we respectfully request an extension of the emergency rule under S. 227.24 (2), Stats., until the permanent rule takes effect in order to preserve the public peace and provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Blanchard', with a long horizontal flourish extending to the right.

Brenda J. Blanchard  
Secretary



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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

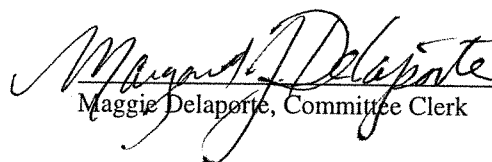
### Attendance Form

September 20, 2001

Room 225 Northwest, State Capitol Building

Accounting for:  Public Hearing  Executive Session

| COMMITTEE MEMBER            | PRESENT | ABSENT | EXCUSED |
|-----------------------------|---------|--------|---------|
| 1. Senator ROBSON           | ✓       |        |         |
| 2. Senator GROBSCHMIDT      | ✓       |        |         |
| 3. Senator HANSEN           |         |        | ✓       |
| 4. Senator COWLES           | ✓       |        |         |
| 5. Senator WELCH            | ✓       |        |         |
| 6. Representative GROTHMAN  | ✓       |        |         |
| 7. Representative SERATTI   |         |        | ✓       |
| 8. Representative GUNDERSON | ✓       |        |         |
| 9. Representative TURNER    | ✓       |        |         |
| 10. Representative HEBL     |         |        | ✓       |
| Totals                      | 7       |        | 3       |

  
Maggie Delaporte, Committee Clerk

**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**

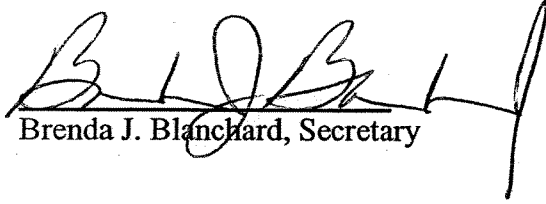
William Wheeler, Director

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.~~

~~(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)