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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

March 25, 2010

Robert Marchant  
Senate Chief Clerk  
B20 Southeast, State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Patrick Fuller  
Assembly Chief Clerk  
Room 401  
17 West Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

### NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 09-121

RULE NO.: Chapter Comm 136

RELATING TO: Midwestern Disaster Area Bonds

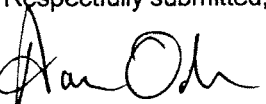
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the chief clerk of each house for referral to the appropriate legislative standing committees.

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 Richard J. Leinenkugel  
Secretary

# RULE REPORT

## Department of Commerce

Clearinghouse Rule No.: 09-121

Rule No.: Chapter Comm 136

Relating to: Midwestern Disaster Area Bonds

*Contact person for substantive questions:*

*Contact person for internal processing:*

Name Sam Rockweiler Name (same)

Title Code Development Consultant Title \_\_\_\_\_

Telephone Number 266-0797 Telephone Number \_\_\_\_\_

1. Basis and purpose of the proposed rule.

As required by Executive Order #288, these rules implement the Wisconsin provisions of the federal Heartland Disaster Tax Relief Act of 2008, which authorizes the Governor to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds for facilitating the recovery and rebuilding of areas that were declared major disaster areas in 2008. These bonds must be issued before January 1, 2013.

2. How the proposed rule advances relevant statutory goals or purposes.

The proposed rules are consistent with the Department's statutory duty to foster the growth and diversification of the economy of Wisconsin.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes were made to the rule analysis or fiscal estimate.

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 09-121

RULE NO.: Chapter Comm 136

RELATING TO: Midwestern Disaster Area Bonds

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

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.

Less stringent requirements are not proposed for small businesses because the directive under which these rules are proposed, Executive Order #288, does not provide such flexibility.

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.

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

No substantive reporting would be imposed on small businesses.

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

The rules are not expected to impose significant costs on small businesses for other measures because the rules address submittal of documentation, and other activities, only by applicants that choose to benefit from tax-exempt private activity bonds.

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.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

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

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

FISCAL ESTIMATE  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Chapter Comm 136  
Amendment No. if Applicable

**Subject**

Midwestern Disaster Area Bonds

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be Possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive  Mandatory
- 2.  Decrease Costs
  - Permissive  Mandatory

- 3.  Increase Revenues
  - Permissive  Mandatory
- 4.  Decrease Revenues
  - Permissive  Mandatory

5. Types of Local Governmental Units Affected:
- Towns  Villages  Cities
  - Counties  Others \_\_\_\_\_
  - School Districts  WTCS Districts

**Fund Sources Affected**

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

Although the rules will newly result in review of documentation relating to designating applicants as eligible for Midwestern Disaster Area Bonds, the time needed for these reviews is expected to be spent by current employees. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

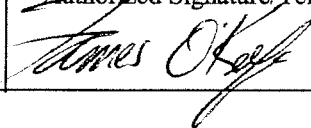
The proposed rules are not expected to impose any significant costs on the private sector because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax-exempt private activity bonds for the recovery and rebuilding of areas which were declared major disaster areas in 2008.

**Long-Range Fiscal Implications**

None known.

Agency/Prepared by: (Name & Phone No.)  
Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.



Date

10/26/09

**FISCAL ESTIMATE WORKSHEET**  
 Detailed Estimate of Annual Fiscal Effect  
 DOA-2047(R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
 Chapter Comm 136

Amendment No.

**Subject**

Midwestern Disaster Area Bonds

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs By Category</b>		
State Operations - Salaries and Fringes	\$0	-\$0
(FTE Position Changes)	( 0.00 FTE)	( - 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
<b>TOTAL State Costs By Category</b>	<b>\$0</b>	<b>-\$0</b>
<b>B. State Costs By Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
<b>III. State Revenues-</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
<b>TOTAL State Revenues</b>	<b>\$0</b>	<b>-\$0</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

*James E. Keefe*

Date

12/26/09

**DEPARTMENT OF COMMERCE  
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 09-121		Hearing Location: Madison	
Rule Number: Chapter Comm 136		Hearing Date: January 25, 2010	
Relating to: Midwestern Disaster Area Bonds			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
No comments were received.			

*File Reference: Comm 136/Hearing Summary*







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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 09-121

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.

Submitted by **DEPARTMENT OF COMMERCE**

12-23-2009 RECEIVED BY LEGISLATIVE COUNCIL.

01-22-2010 REPORT SENT TO AGENCY.

RS:SG

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 09-121

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. In the rule summary, the department should refer to statutory citations using the form “s. 560.03, Stats.,” within a sentence and “Section 560.03, Stats.,” to begin a sentence.
- b. In s. Comm 136.02 (3) (b), does the department intend to include municipalities as defined in s. 67.01 (5), Stats., as an “entity” as the term is used in par. (b)? If so, the department should create par. (d) relating to public corporations or commissions established by entities described in par. (a) or (b) and delete the reference as it exists in par. (b).
- c. In s. Comm 136.02 (9), the definition of public utility property project refers only to “property” as defined by U.S. Code. Should the definition refer to a “project” under U.S. Code in the manner of definitions in s. Comm 136.02 (7) and (11)?
- d. In s. Comm 136.04 (2), should the phrase “will be designated” be replaced by the phrase “has been designated”?
- e. In s. Comm 136.04 (1), is “person using the property” an appropriate description of an applicant? Should the section refer to a project or to use of bond proceeds?
- f. In s. Comm 136.05 (4) (a), did the department intend to omit reference to the 150-day application period in s. Comm 136.05 (2)?

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 09-121

RULE NO.: Chapter Comm 136

RELATING TO: Midwestern Disaster Area Bonds

Agency contact person for substantive questions.

Name: Sam Rockweiler

Title: Code Development Consultant

Telephone No. 266-0797

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached

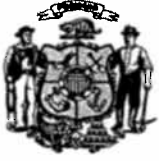
## **RESPONSE COMMENTS TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

Clearinghouse comment 2. a. Statutory references in the rule summary are made without abbreviating “section” and “Statutes” because s. 227.14 (2) (a), Stats., directs agencies to prepare that analysis in plain language.

2. d. The phrase “will be designated” is replaced with “is designated” to be consistent with the terminology in section 702(d)(1)(A)(i)(I) of the federal Heartland Disaster Tax Relief Act of 2008.

2. e. Section Comm 136.04 (1) refers to a “person using the property” as a condition of eligibility in order to be consistent with the terminology in section 702(d)(1)(A)(i)(I) of the federal Heartland Disaster Tax Relief Act of 2008.

*File reference: Comm 136/Legislative Review Clghse*



State of Wisconsin \ Department of Commerce

# RULES IN FINAL DRAFT FORM

**Rule No.:** Chapter Comm 136

**Relating to:** Midwestern Disaster Area Bonds

**Clearinghouse Rule No.:** 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.

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**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 manufacturing and 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/](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.**

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Finance and Compliance, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail [Steven.Sabatke@Wisconsin.gov](mailto:Steven.Sabatke@Wisconsin.gov).

*File reference: Comm 136/rules, analysis-pLR*

SECTION 1. Chapter Comm 136 is created to read:

CHAPTER Comm 136, MIDWESTERN DISASTER AREA BONDS

**Comm 136.01 Purpose.** The purposes of this chapter are as follows:

(1) To establish a procedure for the designation by the governor of bonds issued by, or on behalf of, the state of Wisconsin, or any political subdivision thereof, as qualified Midwestern disaster area bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(2) To implement allocation of the qualified Midwestern disaster area bonding authority provided to Wisconsin under the Act specified in sub. (1), for eligible projects in affected counties, with a basis of providing assistance to areas in the order in which such assistance is most needed.

**Comm 136.02 Definitions.** In this chapter:

(1) "Affected county" means any of the following counties in Wisconsin: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

(2) "Department" means the department of commerce.

(3) "Issuer" means any of the following:

(a) A municipality.

(b) An agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including any redevelopment authority, community development authority, or housing authority established by or on behalf of these entities.

(c) A person acting for or on behalf of an entity listed in par. (a) or (b).

(d) Any public corporation or commission established by or on behalf an entity listed in par. (a) or (b).

(4) "Limitation on aggregate amount" means the limitation on the aggregate amount for the issuance of bonds designated as Midwestern disaster area bonds applicable to the state of Wisconsin, which is \$3,830,112,000.

(5) "Midwestern disaster area bonds" or "MDA bonds" means bonds described in, and designated for the purposes of, 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(6) "Municipality" has the meaning given in s. 67.01 (5), Stats.

**Note:** Section 67.01 (5) of the Statutes reads as follows: " 'Municipality' means any of the following which is authorized to levy a tax: a county, city, village, town, school district, board of park commissioners, technical college district, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, town sanitary district under subch. IX of ch. 60, transit authority created under s. 66.1039, public inland lake protection and rehabilitation district established under s. 33.23, 33.235, or 33.24, and any other public body empowered to borrow money and issue obligations to repay the money out of public funds or revenues. 'Municipality' does not include the state."

(7) "Nonresidential real property project" means a project located in any of the affected counties for which private activity bonds, as defined in 26 USC 141(a), may be issued for the cost of acquisition, construction, reconstruction or renovation of nonresidential real property, including fixed improvements associated with such property.

(8) "Project" means any residential rental project, owner-occupied residence financed with a qualified mortgage issue, public utility property project, or nonresidential real property project for which exempt facility bonds may be issued under 26 USC, as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(9) "Public utility property project" means a project that includes public utility property, as defined in 26 USC 168(i)(10), located in any of the affected counties.

(10) "Qualified mortgage issue" means a qualified mortgage issue as defined in 26 USC 143(a)(2) and as modified and applied by section 702(d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, the proceeds of which are used to finance owner-occupied residences located in any of the affected counties.

(11) "Residential rental project" means a qualified residential rental project under 26 USC 142(d)(1) and 1400N(a), as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, located in any of the affected counties.

**Comm 136.03 Reservation for each affected county.** (1) Prior to January 1, 2011, \$50,000,000 of the limitation on aggregate amount shall be reserved and made available for designations in respect to bonds issued for projects located in each affected county, and the balance of the limitation on aggregate amount shall be available for designations without regard to the affected county in which the project to be financed is located.

(2) Commencing on January 1, 2011, the \$50,000,000 of designations reserved for each affected county under sub. (1) shall terminate, and thereafter designations may be made from the entire unused balance of the limitation on aggregate amount for bonds to finance projects located in any of the affected counties without regard to the affected county in which the project is located.

**Comm 136.04 Eligible applicants.** Applicants for a designation to allow the issuance of MDA bonds are eligible only if either of the following conditions is met:

(1) The person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding, in an affected county, in 2008.

(2) The cost is or will be incurred by a person who is designated as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss as specified in sub. (1).

**Comm 136.05 Request, review and designation process.** (1) A request for a designation under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

(a) The name and address of the issuer.

(b) A description of the project, including, except for bonds expected to qualify as a qualified mortgage issue, the name and address of the owner, operator or sponsor of the project.

(c) The location of the project in one or more of the affected counties.

(d) Evidence that official action has been taken by the issuer with respect to the issuance of the bonds, which, for bonds issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the bonds.

(e) A certification of the applicant to the effect that a preliminary determination has been made by bond counsel that the obligations would constitute private activity bonds under federal tax law and that the bonds are expected to qualify as one or more of the following:

1. Bonds for a nonresidential real property project.

2. Bonds for a public utility property project.

3. Bonds for a residential rental project.

4. A qualified mortgage issue.

(f) The requested amount of the designation.

(g) Evidence of compliance with s. Comm 136.04.

(h) A nonrefundable payment of \$300 by cash or by a certified or cashiers check payable to the department.

**Note:** The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707.

(2) Upon receipt of a completed application, the department shall evaluate whether it meets the requirements of sub. (1).

(3) The department shall forward a request for a designation to the governor, in the order in which qualifying requests are received, if the department determines all of the following:

(a) The application meets the requirements of sub. (1).

(b) A designation in the requested amount would not cause the aggregate amount of bonds designated under this chapter to exceed \$3,830,112,000 and would be in compliance with s. Comm 136.03.

**Note:** The \$3,830,112,000 limitation on aggregate amount is established under 26 USC 1400N(a), as modified and applied by section 702(d) (1) (E) (i) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

**Comm 136.06 Emergency.** Based upon the extensive damage to property in the affected counties that resulted from severe storms, tornados or flooding in 2008 and the resulting substantial adverse economic impact to the affected counties caused thereby, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

**Comm 136.07 Post-designation process.** (1) After the governor makes a designation, the department shall record that the corresponding portion of the limitation on aggregate amount has been designated.

(2) All MDA bonds shall be issued no later than 120 days after a corresponding designation by the governor, or before January 1, 2013, whichever comes first.

(3) (a) Each issuer shall notify the department in writing as to the amount of MDA bonds issued pursuant to the designation from the limitation on aggregate amount, within 15 business days after the issuance of the bonds.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount issued in the bonds, up to a maximum of \$10,000, by cash or by a certified or cashiers check payable to the department.

2. The payment in subd. 1. may be reduced by the amount paid to the department under s. Comm 136.05 (1) (h).

(4) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a designation under this chapter. Upon receipt of such notice, the department shall record the surrender.

(END)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

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File reference: Comm 136/rules 2009LRac