



**RULE-MAKING ORDER**  
(RCW 34.05.360)

**CR-103** (10/1/89)

Agency: Department of Community Development

- Permanent Rule  
 Emergency Rule

(1) Date of adoption: 6/7/93 Administrative Order No. 93-05

(2) Purpose: Amend Bond Cap Allocation Program rules. Clarify refunding procedures; establish criteria for exempt facility bonds; modify and add to definitions in Chapter 365-135.

(3) Citation of existing rules affected by this order:

- Repealed:  
Amended: 365-135  
Suspended:

(4) Authority for adoption:

- Statute: 39.86  
Other Authority:

**(5 1) PERMANENT RULE ONLY**

Pursuant to notice filed as WSR 93-09-061 on April 20, 1993 (date).

Describe any changes other than editing from proposed to adopted version:

None

**(5 2) EMERGENCY RULE ONLY**

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5 3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes  No If yes, explain:

(6) Effective date of rule:

**Permanent Rules**

- 31 days after filing  
 Other (specify) 1/1/94 \*  
\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

**Emergency Rules**

- Immediately  
 Later (specify) \_\_\_\_\_

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON

JUN 07 1993

10:32  
93-13-012

Barbara B. Gooding

*Barbara B. Gooding*

Director

DATE  
6/7/93

AMENDATORY SECTION (Amending Order 87-18, filed 9/16/87)

**WAC 365-135-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly provides otherwise.

Allocation ((assessment)) fee: ~~The ((fee which is comprised of both the issuer's filing fee and approval fee and)) total fee paid by the issuer to the department for receiving allocation from the BCAP. It is assessed by the department ((upon an issuer,)) based ((upon)) on the following formula: 1/40 of one percent (.00025) of the approved allocation amount or five hundred dollars, whichever is greater. The allocation fee, which includes the nonrefundable five hundred dollar filing fee, is due from the issuer upon filing an application.~~

~~((Approval fee: The amount of an issuer's allocation assessment less the filing fee.))~~

Department: The Washington state department of community development.

Extension fee: The fee the department may assess when an issuer requests and is granted an extension for issuing the allocation or carryforward of the allocation. The amount of the fee will not exceed two hundred fifty dollars and is nonrefundable.

Filing fee: ~~((A fee which is payable to the department in the amount of three hundred dollars and is due from the issuer upon filing an allocation request.)) The nonrefundable five hundred dollar portion of the allocation fee.~~

Reallocation: The assignment of an unused portion of the state ceiling from one bond use category to another or the provision of a certificate of approval to any issuer for an allocation amount which previously had been returned to the department.

Statute: Chapter ((297, Laws of 1987)) 39.86 RCW.

AMENDATORY SECTION (Amending Order 87-18, filed 9/16/87)

**WAC 365-135-040 Procedure for obtaining an allocation, extension, or carryforward.** No issuer may receive an allocation of the state ceiling without a certificate of approval from the department.

Issuers may apply for a certificate of approval by submitting a completed allocation request form to the department and paying ~~((a three hundred dollar filing))~~ an allocation fee. An allocation request form will be available from the department.

The department will respond to any such completed request in accordance with the statute. ~~((Each issuer that receives a certificate of approval for allocation will be concurrently notified of an approval fee due. The issuer must either confirm its intention to use its allocation by paying the approval fee in~~

~~accordance with WAC 365-135-050 (3)(b) or lose the allocation approval.)~~ If an issuer does not issue private activity bonds or mortgage credit certificates in the amount and by the date for which it has received a certificate of approval, the unused amount shall revert to the department for reallocation, unless an extension or carryforward is granted.

An issuer may apply for an extension or carryforward of its allocation by submitting its request to the department and supplying any additional information required by the department. The department will promptly notify the issuer if any fees are due and respond to the request for extension or ~~((allocation))~~ carryforward in a timely manner.

AMENDATORY SECTION (Amending Order 87-18, filed 9/16/87)

**WAC 365-135-050 Fees.** (1) A fee schedule is hereby established, which will consist of:

~~((1) A filing))~~ (a) An allocation fee, due at the time a request is filed with the department of community development; and  
~~((2) An approval fee, due after the department approves an allocation amount for an issuer; and~~

~~(3))~~ (b) In certain cases, an extension or carryforward fee. If an issuer's allocation request is denied, ((only the filing fee is due. The filing fee and the approval fee together comprise the issuer's allocation assessment, the total amount of which is based on the following formula:

1/40 of one percent (.00025) of the approved allocation amount or five hundred dollars, whichever is greater))  
the allocation fee, less the five hundred dollar filing fee, will be refunded.

Annually, the department will determine if an adjustment of the fees is warranted by reviewing the account of BCAP revenues and expenses for the preceding fiscal year and by considering BCAP budget projections for the following fiscal year.

(2) Payment of the fees will occur as indicated by the schedule below.

(a) Filing. Upon filing an allocation request, the issuer must submit ~~((a nonrefundable filing fee of three hundred dollars, which will count as part of the total allocation assessment if an allocation of the state ceiling is granted. The issuer may also elect to pay in advance any additional amount toward the balance of its anticipated allocation assessment))~~ the total allocation fee, of which the five hundred dollar filing fee is nonrefundable.

(b) ~~((Approval. Any request that receives allocation approval will be concurrently notified of the approval fee amount due. The approval fee represents the unpaid balance of the allocation assessment. Within fifteen business days from the date the department of community development grants an allocation approval, the issuer must submit the approval fee or lose the allocation approval, except that any amount of the approval fee greater than one thousand dollars may be payable within ten business days from~~

~~the date the bond sale is closed or at such date as agreed upon by both the department and the issuer.~~

~~(e))~~ Extensions and carryforwards. The department may assess an ~~((additional filing))~~ extension fee, not to exceed two hundred fifty dollars, upon any request for extension or carryforward. The extension fee must be paid prior to the extension being granted. However, if the BCAP administrator determines that an issuer's allocation ~~((assessment includes))~~ fee included a sufficient amount to pay for the additional administrative expenses associated with granting or denying such a request, the additional fee shall be waived.

~~((d))~~ (c) Refunds. If a requesting issuer pays any fee greater than the amount assessed by the department, that amount shall be refunded by the department.

If the allocation request is denied or a partial allocation is approved, the issuer will receive either a full or partial refund of the allocation fee, less the five hundred dollar filing fee. Once the allocation amount is approved, the allocation fee is not refundable, even if the issuer does not issue all or any of the approved allocation.

#### NEW SECTION

**WAC 365-135-070 Criteria for exempt facility bonds.** (1) In addition to the state statute, the following guidelines will be used as criteria for evaluating exempt facility requests:

(a) Until September 1st of each year, any one exempt facility project may not receive more than thirty percent of the initial allocation amount available in the exempt facility category.

(b) The level of unemployment in a particular community within a county, to the extent that figures are available from the Washington state employment security department.

(c) The number of direct jobs and secondary or spin-off jobs expected to be generated by the project.

(d) The environmental benefit of the project to the particular community, the county or the state.

(e) Exempt facility applications will not be considered for allocation until:

(i) The department receives:

(A) A list of all permits required to complete the project and the date each permit application was submitted to and/or granted by the appropriate authority;

(B) A copy of any environmental impact statements; and

(ii) Significant progress is demonstrated in securing project financing.

(2) After September 1st of each year, the department may approve an allocation amount prior to the issuer completing all of the criteria listed above.