



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (4/25/96)

Agency: Dept. of Community, Trade and Economic Development.

- Permanent Rule
- Emergency Rule
- Expedited Repeal

(1) Date of adoption: January 2, 1997

(2) Purpose: Clarify and add criteria for the Small Issue and Exempt Facility categories, and add a reallocation section.

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

Repealed:

Amended: WAC 365-135

Suspended:

(4) Statutory authority for adoption:

Other authority: 39.86 and 43.330.040(2)(G)

PERMANENT RULE ONLY

Adopted under notice filed as WSR 96-23-009 on November 8, 1996 (date).

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

None.

EMERGENCY RULE ONLY

Under 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:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date).

(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
or Expedited Repeal

- 31 days after filing
- Other (specify) _____*

Emergency Rules

- Immediately
- Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JAN 32 1997

TIME: 8:35
WSR 97-02-093

NAME (TYPE OR PRINT)

Bill Cole

SIGNATURE

Bill Cole

TITLE

Program Manager

DATE

1/2/97

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	0	New _____	Amended _____	Repealed _____
Federal rules or standards:	0	New _____	Amended _____	Repealed _____
Recently enacted state statutes:	0	New _____	Amended _____	Repealed _____

The number of sections adopted at the request of a nongovernmental entity: 0

New _____ Amended _____ Repealed _____

The number of sections adopted on the agency's own initiative:

New 1 Amended 6 Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New 1 Amended 6 Repealed _____

The number of sections adopted using:

Negotiated rule making:	New <u>1</u>	Amended <u>6</u>	Repealed _____
Pilot rule making:	New _____	Amended _____	Repealed _____
Other alternative rule making:	New _____	Amended _____	Repealed _____

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

WAC 365-135-010 Purpose. The federal Tax Reform Act of 1986 imposes an annual ceiling on each state limiting the dollar volume of certain private activity bonds that can be issued. To allocate this ceiling among eligible issuers in Washington state, chapter 297, Laws of 1987 has been enacted. In accordance with the statute, the department of community, trade, and economic development will allocate the state's private activity bond ceiling and establish by rule a fee schedule. The department will carry out such functions through the bond cap allocation program (BCAP).

AMENDATORY SECTION (Amending Order 93-05, filed 6/7/93, effective 1/1/94)

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

Allocation fee: The total fee paid by the issuer to the department for receiving allocation from the BCAP. It is assessed by the department 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, which includes the nonrefundable five hundred dollar filing fee, is due from the issuer upon filing an application.

Department: The Washington state department of community, trade, and economic 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: 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 39.86 RCW.

NEW SECTION

WAC 365-135-035 Reallocations. (1) Housing programs and projects will be given priority for the first fifty percent of the bond cap available after September 1 each year because of the need for affordable housing, the program's ability to serve lower-income households, its contribution to and support of economic development and long-term benefits that may be achieved.

(2) Bond cap will consider other categories of applications including industrial development bonds, exempt facilities, public utility districts, and student loans for allocation from the remaining bond cap available after September 1.

(a) The program will consider and then evaluate and balance the public benefits listed in statute and in rule in making allocation decisions. Allocations will be based upon the likelihood of a project achieving the highest overall public purposes and the degree to which a project:

(i) Provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security);

(ii) Creates or retains jobs that pay higher than the median wage for the county in which it is located, in sustainable industries, particularly for lower-income persons;

(iii) Retains or expands the local tax base;

(iv) Encourages and facilitates the provision of student loans for institutions of higher education;

(v) Reduces environmental pollution;

(vi) Facilitates investments in new manufacturing technologies enabling Washington industries to stay competitive;

(vii) Diverts solid waste from disposal and manufactures it into value-added products;

(viii) Encourages the environmentally sound handling of solid waste using best management's practices; or

(ix) Produces competitively priced energy for use in the state.

(b) The criteria in this section and other applicable criteria otherwise established in statute and rule shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

AMENDATORY SECTION (Amending Order 93-05, filed 6/7/93, effective 1/1/94)

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 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. 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 carryforward in a timely manner.

The housing category will be given priority for carryforward allocations.

AMENDATORY SECTION (Amending Order 93-05, filed 6/7/93, effective 1/1/94)

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

(a) An allocation fee, due at the time a request is filed with the department of community, trade, and economic development; and
(b) In certain cases, an extension or carryforward fee.

If an issuer's allocation request is denied, 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 the total allocation fee, of which the five hundred dollar filing fee is nonrefundable.

(b) Extensions and carryforwards. The department may assess an 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 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.

(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.

WAC 365-135-060 Criteria for small issue (industrial revenue) bonds. In addition to the statute, the following guidelines will be used as criteria for evaluating small issue requests:

(1) Until June 1 of each year, a minimum percentage of the ceiling available for small issues will be set aside for issuers in those locations which BCAP designates by certain geographic and distress indicators, as follows:

<u>Designation</u>	<u>Allocation set-aside</u>
East/distressed	15% or greater
West/distressed	15% or greater
East/nondistressed	10% or greater

(2) In evaluating the number of ~~((employment opportunities))~~ jobs created or retained a project would offer in relationship to the dollars which would be allocated from the ceiling, priority will be given to those projects, relative to their appropriate designation, which do not exceed the following ratios for dollars allocated per job:

<u>Designation</u>	<u>\$ (in thousands) per job offered</u>
East/distressed	((292.2/job)) <u>\$192.2/job</u>
East/nondistressed	121.6/job
West/distressed	((246.2/job)) <u>146.2/job</u>
West/nondistressed	((206.6/job)) <u>106.6/job</u>
State-wide	((216.8/job)) <u>116.8/job</u>

(3) The program will consider the number and type of jobs that will be created or retained. Projects that create new jobs will, in general, have priority over others. Projects that involve relocation from one part of Washington to another will, in general, have a lower priority than those that create net new jobs, unless the relocation was caused through displacement for other job creating or economic development activity.

(4) Projects that involve the creation of semiskilled and skilled jobs as well as unskilled jobs, or that will provide special training and promotion opportunities to employees, will have priority over those that do not. Projects that will be located in enterprise communities, neighborhood empowerment zones, or distressed areas will be accorded priority over other projects.

(5) Priority will be given to projects that result in publicly owned facilities over privately owned facilities.

(6) If the department finds that a particular project does not meet the guidelines in this section, but is nonetheless in the best interest of the state, the department may approve the request. Factors that may lead to such a finding include the following:

(a) 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; and

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

~~((4))~~ (7) If demand for allocation exceeds the amount available, priority will be given to counties designated as distressed, using unemployment figures from the employment security department.

~~((5))~~ (8) The department will review these guidelines at least annually.

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 degree to which the project proposes to provide jobs for lower-income persons from the community.

(e) The number of jobs created in proportion to the amount of the bond cap allocation.

(f) The proportionate number of persons in relationship to the size of the community who will benefit from the project.

(g) The degree to which the project provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security).

(h) The degree to which the project retains or expands the local tax base.

(i) The degree to which the project reduces environmental pollution.

(j) The degree to which the project diverts solid waste from disposal and manufactures it into value-added products.

(k) The degree to which the project produces energy at a lower cost than alternative or existing energy sources.

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

~~((e))~~ (m) The availability of bond cap from the exempt facility category.

(n) Recognize and accommodate the unique timing, and issuance needs of large scale projects that may require allocations in more than one year.

(o) Projects that result in publicly owned facilities over privately owned facilities.

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

~~((i))~~ (a) The department receives:

~~((A))~~ (i) 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))~~ (ii) A copy of any environmental impact statements; and

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

~~((2))~~ (3) The criteria in this section and other applicable criteria otherwise established in rule and statute shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

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

(5) Exempt facility projects may receive an allocation in order to convert taxable financing to tax-exempt financing, but only in January or September of any year. The request for conversion will be compared against other requests for conversion and current exempt facility applications. Projects that use the Washington economic development finance authority to complete their financing will have priority over projects in obtaining future allocations to convert to tax-exempt financing. Conversion is only allowed within the federal guidelines of one year after the project comes on-line or two calendar years after the Washington economic development finance authority financing is approved, whichever comes first.

(6) Exempt facility projects up to \$50,000,000 may receive an allocation for up to one hundred percent of the total project cost. Projects from \$50,000,001 to \$75,000,000 may receive an allocation for up to ninety percent of the total project cost. Projects from \$75,000,001 to \$100,000,000 may receive an allocation for up to eighty percent of the total project cost. Projects over \$100,000,000 may receive an allocation for up to seventy percent of the total project cost. A project may obtain additional allocation above these percentages after September 1 of the last year of eligibility only if the total demand for cap is lower than the amount available.