



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON  
FILED

DATE: May 19, 2021

TIME: 9:34 AM

WSR 21-11-100

**Agency:** Department of Commerce

**Title of rule and other identifying information:** (describe subject) WAC 365-135 BOND CAP ALLOCATION: amendments to -035(1); -035(2); -070(1)(a); -070(4); -070(5); -070(6).

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rule change will adjust six references within the existing WAC provisions from September 1 to July 1. This will allow for earlier re-allocation of unutilized bond cap from initial set-aside categories to applicants in other categories reducing wait times for projects to proceed. This will assist with maximizing utilization of bond cap during the calendar year.

--The change to WAC 365-135-035(1) amends the date (from 9/1 to 7/1) after which Housing programs and projects are given priority for the first 50 percent of released/reallocated volume cap.

--The change to WAC 365-135-035(2) amends the date (from 9/1 to 7/1) of the provision which indicates that applicants from all other categories will be considered for allocation of released/reallocated volume cap.

--The change to WAC 365-135-070(1)(a) amends the date (from 9/1 to 7/1) when an exempt facility applicant may be awarded more than thirty percent of the initial set-aside for exempt facility projects.

--The change to WAC 365-135-070(4) amends the date (from 9/1 to 7/1) at which the application criteria for exempt facility applicants are softened.

--The change to WAC 365-135-070(5) amends the date (from 9/1 to 7/1) when exempt facility projects may receive an allocation to convert taxable financing to tax-exempt financing.

--The change to WAC 365-135-070(6) amends the date (from 9/1 to 7/1) when four tiers of limitations on the proportion of volume cap allocation to total project cost can be waived.

**Reasons supporting proposal:** These changes will provide conformance with the provisions of RCW 39.86 which were amended in 2010 to alter release/reallocation dates for initial bond cap set-asides from September 1 to July 1. These changes will ensure that the framework and intent that existed in the rules prior to the amendments to the code in 2010 are restored.

--Without the change to WAC 365-135-035(1) housing programs may receive less than 50 percent of released/reallocated volume cap. This is inconsistent with the WAC framework and intent that existed prior to RCW changes in 2010 and the amendment would bring consistency with the pre-2010 rules.

--Without the change to WAC 365-135-035(2) applicants from various categories do not have explicit authorization under the rules for reallocation of initial set-asides in other underutilized categories. This is inconsistent with the WAC framework and intent that existed prior to RCW changes in 2010 and the amendment would bring consistency with the pre-2010 rules.

--Without the change to WAC 365-135-070(1)(a) amends the date (from 9/1 to 7/1) an exempt facility applicant is inhibited from immediate consideration for released cap. As a result, exempt facility projects are at a disadvantage in competing for released volume cap in comparison to other categories in a manner that did not occur prior to the 2010 amendments to RCW 39.86.

--Without the change to WAC 365-135-070(4) the strict criteria for exempt facility applicants are maintained for a period after the general release date in a manner inconsistent with the pre-2010 framework.

--Without the change to WAC 365-135-070(5) the date when an exempt facility project may receive an allocation to convert taxable financing to tax-exempt financing occurs two months after the general release date. As a result, these projects are at a disadvantage in competing for released volume cap in comparison to other categories in a manner that did not occur prior to the 2010 amendments to RCW 39.86.

--Without the change to WAC 365-135-070(6) the date when four tiers of limitations on the proportion of volume cap allocation to total project cost are waived occurs two months after the general release date. As a result, these projects are at a disadvantage in competing for released volume cap in comparison to other categories in a manner that did not occur prior to the 2010 amendments to RCW 39.86.

**Statutory authority for adoption:** RCW 34.05.353(1)(b) and RCW 34.05.353(1)(d)

**Statute being implemented:** RCW 39.86

**Is rule necessary because of a:**

|                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Name of proponent:** (person or organization) Department of Commerce

|  |
|--|
| <input type="checkbox"/> Private                 |
| <input type="checkbox"/> Public                  |
| <input checked="" type="checkbox"/> Governmental |

**Name of agency personnel responsible for:**

|                 | Name          | Office Location                     | Phone        |
|-----------------|---------------|-------------------------------------|--------------|
| Drafting:       | Allan Johnson | 1011 Plum St SE, Olympia, WA, 98504 | 360-725-5033 |
| Implementation: | Allan Johnson | 1011 Plum St SE, Olympia, WA, 98504 | 360-725-5033 |
| Enforcement:    | Allan Johnson | 1011 Plum St SE, Olympia, WA, 98504 | 360-725-5033 |

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** This will affect timing of release/reallocation dates but will not change the overall amount of private activity volume cap. It may assist in maximizing use of volume cap within a specific calendar year.

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.


**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):** The proposed WAC amendments will bring the rules into conformance with the code revisions adopted in 2010 that changed the release dates for initial set-asides from September 1 of each year to July 1 of each year.

NOTICE

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

Name: Amber Siefer  
Agency: Department of Commerce  
Address: 1011 Plum Street SE, Olympia, WA 98504-2525  
Phone: 360-522-0101  
Fax: NA  
Email: [amber.siefer@commerce.wa.gov](mailto:amber.siefer@commerce.wa.gov)

Other:  
**AND RECEIVED BY** (date) July 19, 2021

|                                 |  |
|---------------------------------|--|
| <b>Date:</b> May 19, 2021       | <b>Signature:</b><br> |
| <b>Name:</b> Amber Siefer       |  |
| <b>Title:</b> Rules Coordinator |  |