

# RULES AND REGULATIONS

## Title 13—COMMERCE AND TRADE

### DEPARTMENT OF COMMERCE

#### [13 PA. CODE CH. 57]

#### Private Activity Bonds—Allocation

The Department of Commerce (Department) amends § 57.1 (relating to allocations) to read as set forth in Annex A. The regulation is amended under authority of section 7(4) of the Tax-Exempt Bond Allocation Act (act) (73 P. S. § 397.7(4)).

#### *Background*

The Federal Internal Revenue Code of 1986 (IRC) imposes a State ceiling on the aggregate amount of private activity bonds that may be issued in each calendar year by or on behalf of the Commonwealth and its political subdivisions.

The General Assembly adopted the act in 1985 to provide for the allocation of the State ceiling. Section 7(4) of the act authorizes the Secretary of Commerce to promulgate regulations as may be necessary to carry out the purposes set forth in the act.

This amended regulation provides for the 1996 allocation of the State ceiling. The amendment is needed because the current regulation provides allocations only for calendar year 1995.

#### *Amendment*

Section 57.1 is amended to establish the private activity bond allocations for calendar year 1996.

#### *Notice*

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (CDL) (P. L. 769, No. 240) (45 P. S. § 1204(3)), which specifies that a regulation may be adopted without notice of proposed rulemaking if proposed rulemaking procedures are "in the circumstances impracticable, unnecessary, or contrary to the public interest." The proposed rulemaking procedures are unnecessary, since the regulation simply establishes the private activity bond allocations for calendar year 1996. Since the allocations are made under the formula set forth in the act, public comments will have no impact upon the allocation.

#### *Fiscal Impact*

This amendment has no fiscal impact on the Commonwealth, political subdivisions or the public. The amendment does not affect the total dollar amount of private activity bonds, as these ceilings are determined by Federal law. No Commonwealth funds are involved in the issuance of private activity bonds. All costs of bond issuance are paid for by bond proceeds or through funds of the issuer or borrower. The amendment will result in the use of private activity bonds to their maximum benefit, thereby increasing available resources.

#### *Paperwork Requirements*

Additional paperwork requirements are not imposed as a result of the amendment.

#### *Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), the Department submitted a copy of this regulation with proposed rulemaking omitted on April 5, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Business and Commerce and the Senate Committee on Community and Economic Development. On the same date, the amendment was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, this regulation was approved by the House Committee on May 1, 1996, and was deemed approved by the Senate Committee on May 6, 1996. IRRC approved the regulation on May 2, 1996.

#### *Contact Person*

For further information regarding the amended regulation, contact Jill Busch, Deputy Chief Counsel, Office of Chief Counsel, Department of Commerce, Room 416 Forum Building, Harrisburg, PA 17120, (717) 783-8452.

#### *Findings*

The Department finds that:

(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), are unnecessary, since the regulation simply establishes the private activity bond allocations for calendar year 1996. Since the allocations are made under the formula set forth in the act, public comments will have no impact upon the allocation.

(2) Public notice of intention to adopt the regulation has been omitted under section 204 of the CDL and the regulations thereunder, 1 Pa. Code § 7.4.

(3) Delay in implementing the regulation will have a serious adverse impact on the public interest.

#### *Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 13 Pa. Code Chapter 57, are amended by amending § 57.1 to read as set forth in Annex A.

(b) The Secretary of Commerce shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of Commerce shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

THOMAS B. HAGEN,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 2369 (May 18, 1996).)*

**Fiscal Note:** 4-58. No fiscal impact; (8) recommends adoption.

## Annex A

**TITLE 13. COMMERCE AND TRADE**  
**PART I. DEPARTMENT OF COMMERCE**  
**CHAPTER 57. PRIVATE ACTIVITY**  
**BONDS—ALLOCATION**

**§ 57.1. Allocations.**

(a) *Authority for allocations.* The State unified volume cap for the issuance of qualified private activity bonds provided by section 146(d) of the Internal Revenue Code (26 U.S.C.A. § 146(d)) for calendar year 1996 will be allocated utilizing the authority provided by section 146(e) of the Internal Revenue Code and section 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.7(4)) in the manner provided by this chapter.

(b) *Housing related bonds.* An amount equal to \$175 million will be allocated for housing related bonds, including qualified residential rental projects and qualified mortgage bonds as defined by sections 142(d) and 143(a) of the Internal Revenue Code (26 U.S.C.A. §§ 142(d) and 143(a)). Requests to apply the housing related bond allocation to specific projects or uses, including mortgage credit certificate programs, will be reviewed and may be approved or disapproved by the Board of the Housing Finance Agency. Applications for housing related bond allocations shall be made to the Executive Director of the Housing Finance Agency.

(c) *Qualified student loan bonds.* No amount will be allocated to the Higher Education Assistance Agency for qualified student loan bonds provided by section 144(b) of the Internal Revenue Code (26 U.S.C.A. § 144(b)).

(d) *Qualified small issue bonds.*

(1) An amount equal to \$152,600,000 will be allocated for qualified small issue bonds under section 144(a) of the Internal Revenue Code. Of this amount, \$26,800,000 will be used to allocate \$400,000 to each county. The remaining \$125,800,000 will be allocated among the counties in accordance with the following formula:

(i) The Secretary will determine the ratio of the county's total 1994 and 1995 allocation usage to the sum of every county's 1994 and 1995 allocation usage.

(ii) The Secretary will multiply the ratio determined in subparagraph (i) by \$125,800,000.

(2) Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary. Applications for allocations shall be made to the Bonds Office in the Department. The Secretary will provide allocations for qualified small issue bonds utilizing the procedures and subject to the requirements imposed by § 55.6 (relating to allocation procedures).

(e) *Other qualified private activity bonds.* An amount equal to \$225 million will be allocated to other qualified private activity bonds, including qualified redevelopment bonds as defined by section 144(c) of the Internal Revenue Code, exempt facility bonds as defined by section 142 (excluding section 142(d)) of the Internal Revenue Code, and enterprise zone bonds as defined by section 1394 of the Internal Revenue Code, all of which are subject to the unified volume cap provided by section 146 of the Internal Revenue Code. Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary. Applications for allocations shall be made to the Bonds Office in the Department. The Secretary will provide allocations for qualified private activity bonds utilizing the procedures and subject to the requirements imposed by § 57.3 (relating to procedures). An allotment of at least 25% of the total amount for other qualified private activity bonds is reserved for solid waste disposal projects.

(f) *Special allocation pool.* The Secretary may utilize not more than \$50 million for a special allocation pool for projects which require more bond authority than a given county currently has available to it. To qualify for consideration to use this pool, local issuing authorities shall demonstrate to the Secretary's satisfaction that they have acted responsibly in selecting projects which maximize long-term net new job creation, consistent with the intent of the Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8). Decisions regarding use of the special allocation pool for small issue purposes will be based upon the characteristics and merits of individual projects proposed, and upon the record of the issuing authority in utilizing industrial development financing to create or retain jobs. A project may be considered if the entire allocation for the county in which the project is proposed has been obligated. In determining approval or disapproval of allocation requests from this pool, the Secretary will consider the following:

- (1) The amount of the allocation available.
- (2) The size of the project.
- (3) The level of economic distress.
- (4) The number of net new jobs to be created.
- (5) The ability to undertake the project without approval.
- (6) The amount of private funds leveraged.
- (7) The project's consistency with the economic development plans of the Commonwealth and of municipalities and regions.
- (8) The date the bonds are to be issued.

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