

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 141]

Community Development Grant Program

The Department of Community and Economic Development (Department), under section 1764 of the Community Development Block Grant Entitlement Program for Nonurban Counties and Certain Other Municipalities (act) (35 P. S. § 1764), amends Chapter 141 (relating to community development grant program).

Introduction

This final-omitted rulemaking is in response to Governor Rendell's Economic Stimulus Package as it relates to the 108 loan guarantee program. Under the current regulations, nonentitlement public entities may obtain Federally guaranteed loans through the Commonwealth to fund their economic development projects and undertake revitalization activities by committing the use of future Community Development Block Grant (CDBG) funds to pay off the loan in case of default. The final-omitted rulemaking will increase the amount of loan guarantee funds available, double the duration of the loan guarantee period and provide additional security from the Commonwealth for the loan guarantee. This final-omitted rulemaking should make the 108 loan guarantee program more attractive to nonentitlement public entities, which previously viewed the program as too burdensome and complicated for smaller communities to use.

Analysis

Section 141.302 (relating to definitions) is amended to add definitions of "joint public entities," "consortium" and "consortium member."

Section 141.303 (relating to applicability of HUD implementing regulations) is amended to clarify that an application for 108 loan guarantees shall be submitted to and approved by the Department before it may be submitted to United States Department of Housing and Urban Development (HUD).

Section 141.304 (relating to limitations on loan commitments—entitlement public entities) is amended to revise the funding limitation for entitlement entities and to clarify that the funding limitation applies to both single public entities and joint public entities.

Section 141.305 (relating to limitations on loan commitments—nonentitlement public entities) is amended to revise the funding limitation for nonentitlement public entities; to clarify that the \$3 million funding limitation established in this section applies to individual public entities; and to designate the existing paragraph as subsection (a). Subsection (b) is added to clarify that although a county may apply for assistance on behalf of multiple nonentitlement public entities, the county's funding limitation is \$7 million. Subsection (c) is added to require consortium membership for nonentitlement entities seeking assistance under this program.

Section 141.306 is rescinded, as the amended regulations clearly recognize joint public entity applications for assistance.

Section 141.307(a) (relating to limitations on loan commitments—public entities) is amended to change the limitation on the repayment period for a guaranteed loan from 10 years to 20 years. Subsection (b) is amended to broaden the security offered by the Department to HUD.

Subsection (c) is deleted and replaced with language which would permit the Department to provide an additional guarantee from sources other than the public entity's annual CDBG grant, as well as clarifying that an additional guarantee would supersede the use of the public entity's CDBG funds as a source to guarantee debt payments for a section 108 loan. Subsection (e) is amended to permit amortization variations if approved in writing by the Department. Subsection (f) is amended to include HUD in the contracting process. Subsection (g) is amended to require security in addition to a pledge of CDBG allocations when the pledge of the allocation is insufficient.

Section 141.309(a) (relating to Department approval) is amended to permit the Department to consider factors other than those listed in this subsection when determining whether to disapprove a loan guarantee request or approve a loan guarantee request for an amount less than requested.

Fiscal Impact

The final-omitted rulemaking is cost neutral with respect to political subdivisions and the public. The Commonwealth will incur costs totaling \$1,475,500, of which \$880,000 will be expended in the first year to establish a loan loss reserve fund and \$198,500 will be expended each year over the next 3 years to cover technical assistance costs. The costs incurred in administering this program and providing technical assistance will be covered through the Federal CDBG administrative funds available through this program and within existing authorization levels of those funds. While there are potential costs that may be incurred in future years if loans default, these costs will be absorbed by either the loan loss account that will be established with the new approach to administering the program or the use of CDBG program funds, or both.

Paperwork

No new or different paperwork requirements are imposed as a result of the final-omitted rulemaking.

Notice

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), 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" or if it relates to "Commonwealth property, loans, grants, benefits or contracts" The existing regulations are directly related to a Commonwealth loan guarantee program.

Regulatory Review

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 24, 2005, the Department

submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Commerce Committee and the Senate Community and Economic Development Committee. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act, on November 30, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 1, 2005, and approved the final-omitted rulemaking.

Effective Date/Sunset Date

The final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The regulations will be monitored on a regular basis and updated as needed.

Contact Person

For an explanation of this final-omitted rulemaking, contact Jill B. Busch, Deputy Chief Counsel, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7314.

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 because the amendments are directly related to a Commonwealth loan guarantee program.

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

(3) Delay in implementing the final-omitted rulemaking 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, 12 Pa. Code Chapter 141, are amended by deleting § 141.306 and amending §§ 141.302—141.305, 141.307 and 141.309 to read as set forth in Annex A.

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

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

DENNIS YABLONSKY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 6852 (December 17, 2005).)

Fiscal Note: 4-80. No fiscal impact; (8) recommends adoption; \$1.475 million in Federal Community Development Block Grant administrative funds will be used over 3 fiscal years (2005-2006 through 2007-2008) to create a reserve fund and for administrative costs associated with this regulation.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

Subpart C. COMMUNITY DEVELOPMENT AND HOUSING

CHAPTER 141. COMMUNITY DEVELOPMENT GRANT PROGRAM

SECTION 108 LOAN PROGRAM

§ 141.302. Definitions.

The following words and terms, when used in this section, §§ 141.301 and 141.303—141.309, have the following meanings, unless the context clearly indicates otherwise:

Consortium—A group of public entities that have entered into an agreement with the Department to apply jointly for an allocation of section 108 loan guarantee funds from HUD.

Consortium member—A public entity that has agreed to participate in the consortium to access section 108 loan guarantee funds from HUD.

Entitlement public entity—A city, county, borough, incorporated town or township that qualifies as an eligible entitlement entity under section 3 of the act (35 P.S. § 1753).

Joint public entities—Two or more public entities or a county that applies on behalf of a public entity, or both, which participate in a joint municipal or regional project.

Nonentitlement public entity—A unit of general local government that is eligible to participate in the State administered CDBG Program and which is not an eligible entitlement entity under section 3 of the act.

Public entity—A unit of general local government that is eligible to participate in the State administered CDBG Program.

§ 141.303. Applicability of HUD implementing regulations.

(a) An application for loan guarantees by the Department must meet the requirements in 24 CFR Subchapter C, Subpart M (relating to loan guarantees).

(b) An application for State guarantees submitted with or without assistance from the State shall first be submitted to, and approved by the Department before it may be submitted to HUD.

§ 141.304. Limitations on loan commitments—entitlement public entities.

The amount of loan guarantees that an entitlement public entity receives may not exceed the amount of a public entity's CDBG allocation that can support annual debt service payments based on the average amount of the CDBG allocation for the past 3 years or \$7 million, whichever is less. This maximum amount applies to both single public entity applicants and joint public entity applicants.

§ 141.305. Limitations on loan commitments—nonentitlement public entities.

(a) The total amount of a loan guarantee made to a nonentitlement public entity may not exceed \$3 million.

(b) The maximum aggregate amount of section 108 loan assistance made to a county which applies on behalf of multiple nonentitlement public entities may not exceed \$7,000,000.

(c) Nonentitlement public entities shall join the consortium before applying for section 108 loan guarantee funds from the Department.

§ 141.306. (Reserved).

§ 141.307. Limitations on loan commitments—public entities.

(a) The repayment period for a guaranteed loan may not exceed 20 years.

(b) The security offered by the Department to HUD will include a pledge of all grants made to the State or for which the State may become eligible under applicable Federal law and regulations.

(c) The State may provide an additional guarantee from sources other than the public entity's annual CDBG grant. The additional State guarantee will supersede the use of the public entity's CDBG grant funds as a source to guarantee debt payments for a section 108 loan.

(d) A public entity shall pledge the full amount of CDBG grants to be received during the period of the loan guarantee. Grant amounts for any year sufficient to pay current debt service may not be expended until the debt service for that year has been paid, or until the public entity provides the Department with satisfactory evidence that funds to pay current debt service have been placed in a trust account.

(e) Loans must be amortized on an annual basis, unless otherwise approved in writing by the Department.

(f) A public entity shall enter into a contract with the Department and HUD, in a form acceptable to the Department and HUD, for the repayment of notes or other obligations guaranteed under this section, §§ 141.301—141.305, 141.308 and 141.309.

(g) Security in addition to a pledge of CDBG allocations will be required when the pledge of the allocations is not sufficient to protect all of the potential liability of the Department.

§ 141.309. Department approval.

(a) The Department may disapprove loan guarantees or may approve a guarantee for an amount less than requested, for reasons including one or more of the following:

(1) The Department determines that the guarantee in light of the financial condition of the applicant, the viability of the project or the costs of the project, constitutes an unacceptable financial risk.

(2) The requested guarantee amount exceeds one or more of the limitations in this section and §§ 141.301—141.308 or in applicable Federal regulations.

(3) Funds are not available in the amount requested.

(4) The performance of the public entity under §§ 141.61, 141.62, 141.81, 141.101, 141.102, 141.121—141.125 and 141.141—141.157 is unacceptable.

(5) The activities to be undertaken are ineligible under State or Federal law or regulations.

(b) The Department will notify the public entity in writing that the guarantee has been approved, reduced or disapproved. If the guarantee is reduced or disapproved, the public entity will be informed of the specific reasons

for that action. If the guarantee is acceptable, the Department will approve the application of the public entity to HUD for its commitment.

[Pa.B. Doc. No. 06-89. Filed for public inspection January 20, 2006, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 601]

Low Income Home Energy Assistance Program

The Department of Public Welfare (Department), under the authority of Subarticle F of Article XVII-A of The Fiscal Code (72 P. S. §§ 1751-A and 1752-A), added by the act of December 16, 2005 (P. L. 439, No. 81) (Act 81) and section 403(b) of the Public Welfare Code (62 P. S. § 403(b)), adds Subchapter B (relating to State emergency energy assistance fund) to read as set forth in Annex A.

Omission of Proposed Rulemaking

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4(3). Under Act 81, the Governor has published an emergency declaration in which he has found that, as a result of natural disasters throughout the country, home heating fuel and natural gas prices have risen and the available Federal Home Energy Assistance funds are not sufficient to meet the needs of low-income residents of this Commonwealth. The Governor has determined that, as a result, there is a threat to public health.

The Department finds that, under the present circumstances, notice of proposed rulemaking is impracticable and contrary to the public interest because the time periods required for regulatory review and comment under the Regulatory Review Act (71 P. S. § 745.1—745.14), section 204 of the Commonwealth Attorneys Act (71 P. S. § 732-204) and sections 201 and 203 of the CDL (45 P. S. §§ 1201 and 1203) would take several months. This delay would not allow for prompt implementation of the Emergency Energy Assistance Fund to benefit low-income residents in need of assistance with their home energy needs.

In addition, the Department is adopting Subchapter B because of an emergency, as that term is defined in section 6 of the Regulatory Review Act (71 P. S. § 745.6). Immediate emergency-certified regulations are needed to address the threat to public health occasioned by rising home heating fuel and natural gas prices. These costs adversely impact low-income residents of this Commonwealth. As a result, the General Assembly enacted Act 81 to appropriate funds to the Emergency Energy Assistance Fund. The Governor, under Act 81, has declared that recent natural disasters and high energy prices are a threat to public health and insufficient Federal funds are available to meet the need. Also, Act 81 explicitly authorizes the Department to publish emergency regulations for the Emergency Energy Assistance Fund.

Under section 6(d) of the Regulatory Review Act, the final-omitted rulemaking takes effect immediately and remains in effect for 120 days. During the 120-day period, the final-omitted rulemaking is subject to review under

the procedures for review of a final-omit regulation under section 6(d) of the Regulatory Review Act.

Purpose

The purpose of this final-omitted rulemaking is to comply with Act 81. Act 81 requires that the criteria and emergency regulations for this program be published in the *Pennsylvania Bulletin* along with the publication of the Governor's requisite declaration of a threat to public health and insufficient Federal home energy assistance funds to meet the needs of low-income residents of this Commonwealth. The Department will follow criteria set forth in the Federal Fiscal Year (FFY) 2006 Low-Income Home Energy Assistance Program (LIHEAP) Final State Plan and the regulations in Subchapter A (relating to Federal Low Income Home Energy Assistance Program) in administering the Emergency Energy Assistance Fund.¹

Requirements

The Department has amended Chapter 601 by dividing it into two subchapters. Subchapter A contains the requirements for the Federal LIHEAP program. New Subchapter B describes the eligibility criteria for the State-funded Emergency Energy Assistance Fund and establishes a sunset date. Specifically, § 601.151 (relating to eligibility criteria) provides that the eligibility criteria and benefits for the State Emergency Energy Assistance Fund shall be as set forth in the Commonwealth's FFY 2006 LIHEAP State Plan and Subchapter A. Section 601.152 (relating to sunset date) provides for the program to sunset on June 30, 2006.

Affected Individuals and Organizations

Low-income Pennsylvanians in need of home energy assistance will benefit from the availability of the Emergency Energy Assistance Fund.

Accomplishments and Benefits

The final-omitted rulemaking will benefit low-income Pennsylvanians by providing State funds in addition to the Federal LIHEAP funds for eligible households.

Fiscal Impact

Under Act 81, an amount of up to one mill of the gross receipts tax has been appropriated from the General Fund to the Emergency Energy Assistance Fund for the fiscal year from July 1, 2005, to June 30, 2006.

Paperwork Requirements

No additional paperwork requirements are anticipated as a result of this final-omitted rulemaking.

Effective Date

The final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Public Comment

Although this rulemaking is being adopted without publication as a proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding the rulemaking to the Department of Public Welfare, Office of Income Maintenance, Edward J. Zogby, Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, PA 17120. Comments will be reviewed and considered for any subsequent revision of the regulations.

¹ Notice of the availability of the LIHEAP State Plan for FFY 2006 was published at 35 Pa.B. 5053 (September 10, 2005). Copies of the State Plan are available to the public upon request. The State Plan is available on the Department's website at www.dpw.state.pa.us/LowInc/HeatAssistance/003671219.htm.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Sunset Date

This final-omitted rulemaking will sunset on June 30, 2006.

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on January 10, 2006, the Department submitted a copy of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act.

In addition to submitting the final-omitted rulemaking, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(3) of the CDL, 1 Pa. Code § 7.4(3) and section 6(d) of the Regulatory Review Act because notice of proposed rulemaking is, under the circumstances, impracticable and contrary to the public interest.

(2) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of Act 81.

(3) Adoption by this final-omitted rulemaking is necessary to ameliorate an emergency condition that threatens the public health.

Order

The Department, acting under section 1752-A of The Fiscal Code and section 403(b) of the Public Welfare Code orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 601, are amended by adding §§ 601.151 and 601.152 to read as set forth in Annex A.

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

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

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

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-503. (1) General Fund; (2) Implementing Year 2004-05 is up to \$19.3 million; (3) 1st Succeeding Year 2005-06 is \$0; 2nd Succeeding Year 2006-07 is \$0; 3rd Succeeding Year 2007-08 is \$0; 4th Succeeding Year 2008-09 is \$0; 5th Succeeding Year 2009-10 is \$0; (4) 2003-04 Program—N/A; 2002-03 Program—N/A; 2001-02 Program—N/A; (7) Transfer to State Emergency Energy Assistance Fund; (8) recommends adoption. Act 81 authorizes a one-time transfer of an amount up to 1 mill of the

Gross Receipts Tax from the General Fund to the new State Emergency Energy Assistance Fund. The maximum estimated revenue loss to the General Fund due to this transfer is the \$19.3 million previously listed.

Declaration of Emergency Threat to Public Health

Whereas, Due to recent natural disasters that have occurred in various parts of the country, the cost of home heating fuel and natural gas has been rising, and will continue to rise sharply; and


Whereas, the rise in the cost of home heating fuel and natural gas is having, and will continue to have, a huge impact on low-income Commonwealth residents; and

Whereas, the inability of low-income Commonwealth residents to pay for home heating fuel and natural gas in the coming winter months is a threat to their health.

Now Therefore, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. Section 7101 et seq.) and Subarticle F, Section 1752-A of the Fiscal Code (Act No. 81 of 2005), I do hereby declare that high energy prices caused by weather conditions constitute an emergency threat to public health within this Commonwealth and that available federal home energy assistance funds are not sufficient to meet the needs of residents.

Further, I hereby direct and authorize the Secretary of Public Welfare to administer state funds from the Energy Emergency Assistance Fund available to those in need in a manner consistent with the criteria under the Low Income Home Energy Assistance Program (55 Pa. Code 601 et seq.) and the regulatory changes published concurrently with this declaration.

Given under my hand and the Seal of the Governor, at in the City of Harrisburg, on this ninth day of January in the year of our Lord two thousand and six, and of the Commonwealth the two hundred and thirtieth.



Governor

Annex A

**TITLE 55. PUBLIC WELFARE
PART II. PUBLIC ASSISTANCE MANUAL
Subpart M. HOME ENERGY ASSISTANCE
CHAPTER 601. LOW INCOME ENERGY ASSISTANCE PROGRAM
Subchapter A. FEDERAL LOW INCOME HOME ENERGY ASSISTANCE PROGRAM
* * * * *
Subchapter B. STATE EMERGENCY ENERGY ASSISTANCE FUND**

Sec.
601.151. Eligibility criteria.
601.152. Sunset date.

§ 601.151. Eligibility criteria.

Eligibility criteria and benefits for the State Emergency Energy Assistance Fund shall be as set forth in the Commonwealth's Federal Fiscal Year 2006 LIHEAP State Plan and Subchapter A (relating to Federal Low Income Home Energy Assistance Program).

§ 601.152. Sunset date.

This subchapter will sunset on June 30, 2006.

[Pa.B. Doc. No. 06-90. Filed for public inspection January 20, 2006, 9:00 a.m.]