

*Purpose and Summary*

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 8 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the private activity bond allocation administered pursuant to Iowa Code chapter 7C and the Director of the Authority's role as the Governor's designee for the purposes of that chapter.

*Analysis of Impact*

**1. Persons affected by the proposed rulemaking:**

• **Classes of persons that will bear the costs of the proposed rulemaking:**

Entities that apply for and are approved for an allocation of the State ceiling will bear the costs of the rulemaking.

• **Classes of persons that will benefit from the proposed rulemaking:**

Entities that apply for and are approved for an allocation of the State ceiling will benefit from clarity and streamlining of the rules.

**2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

• **Quantitative description of impact:**

Entities interested in applying for an allocation pursuant to Iowa Code chapter 7C may require staff time to complete an application. Recipients of an allocation may similarly incur costs to comply with reporting and monitoring requirements. Some applicants may choose to rely on an external service provider such as an attorney to complete these tasks. The amount of the costs will vary depending on the compensation of staff or service providers involved.

- **Qualitative description of impact:**

Entities that apply for and are approved for an allocation will benefit from clarity and streamlining of the rules.

**3. Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Authority staff time is required to review and approve applications, verify issuance of bonds, and communicate with applicants and recipients.

- **Anticipated effect on State revenues:**

This rulemaking has no fiscal impact. The Governor has appointed the Director of the Authority as the Governor's designee for the purposes of Iowa Code chapter 7C.

**4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Only the entities that will potentially benefit from an allocation bear the costs of the rulemaking. The costs to the State to administer the allocation are proportional to the activities supported.

**5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Authority has not identified less costly methods or less intrusive methods of administering the allocation.

**6. Alternative methods considered by the agency:**

● **Description of any alternative methods that were seriously considered by the agency:**

The Authority did not consider any alternative methods.

● **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Authority did not consider any alternative methods.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

● Establish less stringent compliance or reporting requirements in the rulemaking for small business.

● Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

● Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

● Establish performance standards to replace design or operational standards in the rulemaking for small business.

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- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

The proposed rules do not have a substantial impact on small business. The rules do not establish design or operational standards.

### *Text of Proposed Rulemaking*

ITEM 1. Rescind 265—Chapter 8 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 8

##### PRIVATE ACTIVITY BOND ALLOCATION

**265—8.1(7C) Authority.** Pursuant to Iowa Code section 7C.12, the governor has appointed the director of the authority as the governor’s designee responsible for administering the procedures for allocation of private activity bonds. The governor’s designee adopts this chapter pursuant to Iowa Code section 7C.12(2) “a.”

**265—8.2(7C) Definitions.**

“*Allocation*” means the same as defined in Iowa Code section 7C.3.

“*Application*” means a request submitted for an allocation.

“*Authority*” means the Iowa finance authority created pursuant to Iowa Code section 16.1A.

“*Beneficiary*” means an entity that is intended to benefit from issuance of a bond by an issuer.

“*Governor’s designee*” means the same as defined in Iowa Code section 7C.3.

“*Issuer*” means a political subdivision that proposes to issue bonds for a particular project or purpose for which an allocation of the state ceiling is required and has not already been made under Iowa Code section 7C.4A(1) through 7C.4A(5).

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*“Political subdivision”* means the same as defined in Iowa Code section 7C.3.

*“Private activity bonds”* means the same as defined in Section 141 of the Internal Revenue Code.

*“State ceiling”* means the same as defined in Iowa Code section 7C.3.

**265—8.3(7C) Forms and applications.** Information and forms are available upon request from the governor’s designee at the address set forth in rule 265—1.3(16) or on the authority’s website.

**8.3(1)** An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must apply for the allocation of a portion of the private activity bond state ceiling allocated pursuant to Iowa Code chapter 7C in the form and content prescribed by the governor’s designee. Applications may be submitted to the governor’s designee electronically or via email.

**8.3(2)** The governing body of an issuer must adopt a resolution evidencing an intent to issue the bonds prior to submission of an application.

**8.3(3)** An applicant must submit the application fee set forth in rule 265—8.7(7C) and all required attachments to the application before such application is considered for allocation.

**8.3(4)** Except as provided in subrules 8.3(5) and 8.4(4), the governor’s designee shall certify allocations in the order in which applications are received, as indicated in Iowa Code section 7C.5. Applications for any given calendar year may be submitted to the governor’s designee beginning on December 1 of the preceding year.

**8.3(5)** The portion of the state ceiling allocated pursuant to Iowa Code section 7C.4A(1)“a”(4) shall be allocated pursuant to subrule 8.4(4).

**265—8.4(7C) Certification of current allocation.**

**8.4(1)** The governor’s designee shall maintain separate lists of applications for private activity bonds for allocation pursuant to Iowa Code section 7C.4A(2), 7C.4A(4), 7C.4A(5),

and 7C.4A(7). If there are additional applications after the state ceiling for the purpose of industries is fully allocated and, before June 30, the state ceiling for the use of political subdivisions is fully allocated to applications, all applications that have not been allocated any state ceiling will be placed on the list for allocation pursuant to Iowa Code section 7C.4A(7) in the chronological order of receipt without regard to the purpose for which such applications were made.

**8.4(2)** The governor's designee shall promptly certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application was submitted, in the order as determined by Iowa Code chapter 7C. The governor's designee shall continue to allocate the state ceiling for each purpose separately (or, if the allocation is made under Iowa Code section 7C.4A(7), in the chronological order of applications received) until all the available state ceiling for that purpose is fully allocated. If there is not sufficient available state ceiling to fully fund an application that is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial offeree will maintain its position on the list. If the partial allocation is accepted, the applicant may submit a new application for additional state ceiling and that application will be added to the bottom of the applicable list in the chronological order of its receipt.

**8.4(3)** If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee in the form and content prescribed by the governor's designee.

**8.4(4)** Upon receipt of a complete application for allocation for a qualified residential rental project, the bonds for which will be issued by the authority, the authority may determine in its sole discretion whether to allocate a portion of its allocation under Iowa Code section 7C.4A(1) “a”(4) to such application based on factors including but not limited to the readiness, feasibility, and impact of the project.

**265—8.5(7C) State ceiling carryforwards.** In the event the aggregate principal amount of bonds issued by all issuers in a calendar year is less than the state ceiling for that calendar year, an issuer or beneficiary may apply to the governor’s designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The application must be in writing and shall comply with the carryforward provisions of Section 146(f) of the Internal Revenue Code and regulations promulgated under that section. Any carryforward allocation that has not expired under Section 146 of the Internal Revenue Code released by the original applicant may be allocated to any other applicant for allocation for the same purpose for which the original application was made.

**265—8.6(7C) Expiration of allocations and resubmission.** Allocations expire as described in Iowa Code sections 7C.7 and 7C.9. If an allocation expires, an issuer may resubmit its application pursuant to Iowa Code section 7C.10.

**265—8.7(7C) Use by political subdivisions.** For the purposes of the amount of the state ceiling allocated pursuant to Iowa Code section 7C.4A(6), a political subdivision will be considered to use the proceeds of private activity bonds if such proceeds are used to finance a project owned or utilized directly by the political subdivision or to finance a program of the political subdivision that the legislature by statute has authorized or directed the political subdivision to implement.

**265—8.8(7C) Application and allocation fees.** The governor's designee may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with this chapter. A fee of 2 basis points (.02%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor's designee.

**265—8.9(7C) References.** All references to the Internal Revenue Code and its implementing regulations in this chapter are to the laws as in effect [effective date of this rulemaking].

These rules are intended to implement Iowa Code chapter 7C.