

**STATE OF ALASKA, ALASKA ADMINISTRATIVE CODE**  
**TITLE 3, PART 13, CHAPTER 99**  
**ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY**  
**Including changes received by the Publisher through March 10, 2011**

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**\*\*\*IMPORTANT\*\*\***

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**Part 13**

**Alaska Industrial Development and Export Authority**

**Chapter 99**

**Commercial and Industrial Financing**

**Article 1. Conduit Revenue Bond Program. (3 AAC 99.100 - 3 AAC 99.160)**

**Editor's note:** Section 53, ch. 13 SLA 1982 enacted [AS 44.88.085](#) , which exempts the Alaska Industrial Development Authority from the regulations-adoption procedures set out in the Administrative Procedure Act ([AS 44.62.040](#) - 44.62.320). In light of that exemption, the authority has decided not to file its regulations voluntarily under [AS 44.62.120](#) . Therefore, the contents of 3 AAC [99](#) (consisting of art. 1, Tax Exempt Revenue Bond Program; art. 2, Tax Exempt Umbrella Bond Program; art. 3, Taxable Revenue Bond Programs; art. 4, General Provisions; and art. 5, Federal Guaranteed Loan Program) did not appear in Registers 84 through 105.

As of Register 106, July 1988, the Alaska Industrial Development and Export Authority began to voluntarily submit its regulations to the Lieutenant Governor for publication under [AS 44.62.120](#) . Except for the phrase "In effect before 1988," the history notes for the regulations do not reflect the history of a section before Register 106.

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**Article 1**  
**Conduit Revenue Bond Program**

Section

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**3 AAC 99.100. Scope of article**

3 AAC 99.100 - 3 AAC 99.160 apply to applications submitted to the authority for financing of a project under the conduit revenue bond program. In 3 AAC 99.100 - 3 AAC 99.160, "conduit revenue bond program" means the authority's program of financing or participating in the financing of projects through the issuance of bonds the interest of which may or may not be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended, and which are not in any way a liability of the authority.

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 11/1/99, Register 153; am 12/3/2010, Register 197**

**Authority:** AS 44.88.080

AS 44.88.085

AS 44.88.090

AS 44.88.095

**3 AAC 99.110. Application**

(a) To request the authority's assistance under the conduit revenue bond program, a person must submit an application to the authority. The person may apply on a form provided by the authority.

(b) The application must contain information sufficient to allow the authority to determine whether the proposed project and the applicant appear to be eligible to participate in the conduit revenue bond program and whether interest on the authority's bonds issued for the proposed project would be excluded from gross income for federal income tax purposes under the code. The applicant must submit a nonrefundable \$500 fee to the authority with the application. If the application is for a refunding of a bond previously issued by the authority for the project, the authority may waive all or part of the fee set out in this subsection.

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(c) The authority will review the application and will make a preliminary determination of whether the proposed project and applicant are eligible to participate in the conduit revenue bond program and whether interest on the authority's bonds issued for the project would be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986. The authority may contact the applicant to discuss the application or to request additional information. Until the applicant provides information sufficient in the judgment of the authority, the authority will not make a preliminary determination. At any time the authority may (1) notify the board of directors of the application, (2) provide information to the board of directors regarding the applicant and the project, or (3) seek direction from the board of directors regarding the application.

(d) If the authority determines under (c) of this section that the proposed project and applicant are eligible to participate in the conduit revenue bond program and that interest on the authority's bonds issued for the project would be excluded from gross income for federal income tax purposes under the code, the authority will make a recommendation regarding the application to the board of directors. The recommendation may be for the adoption of an eligibility resolution under 3 AAC [99.115](#), the adoption of a bond authorization resolution under 3 AAC [99.130](#), or other action as the authority considers appropriate under the circumstances. The board of directors may accept the recommendation and take the recommended action or may reject the recommendation and take no action or take a different action.

(e) If the authority determines under (c) of this section that the proposed project and applicant are eligible to participate in the conduit revenue bond program but that interest on the authority's bonds issued for the project would not be excluded from gross income for federal income tax purposes under the code, the authority will notify the applicant of such determination and will take no further action with respect to the application unless the applicant notifies or has previously notified the authority that the applicant wishes to finance the applicant's project with proceeds of conduit revenue bonds the interest on which would be included in gross income for federal income tax purposes under the code.

(f) If the authority determines under (c) of this section that the proposed project or applicant is not eligible to participate in the conduit revenue bond program, the authority will notify the applicant of such determination. The applicant may appeal that determination to the board of directors by delivering to the authority a notice of appeal. The authority must receive the notice of appeal not more than 30 days after the date on which the authority notified the applicant of its determination. The authority will transmit the notice of appeal, a summary of the application, and the authority's preliminary determination to the board of directors. The board of directors will make the final determination of whether either the proposed project or the applicant is ineligible for participation in the conduit revenue bond program. If the board of directors determines that either the proposed project or the applicant is ineligible for participation in the

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conduit revenue bond program, the authority will take no further action with respect to the application and will notify the applicant that this is the final decision on the application.

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 2/11/99, Register 150; am 11/1/99, Register 153; am 8/8/2003, Register 168; am 12/3/2010, Register 197**

**Authority:** [AS 44.88.080](#)

[AS 44.88.085](#)

[AS 44.88.090](#)

[AS 44.88.095](#)

**3 AAC 99.115. Eligibility resolution**

The board of the authority may adopt an eligibility resolution for a project at any time. An application under 3 AAC [99.110](#) is not required before the board of the authority may adopt an eligibility resolution. An eligibility resolution may include other determinations or statements by the board to support the project or to permit costs of the project to be financed using proceeds of conduit revenue bonds, the interest on which is not included in gross income for federal income tax purposes under the code.

**History: Eff. 12/3/2010, Register 197**

**Authority:** [AS 44.88.080](#)

[AS 44.88.085](#)

[AS 44.88.090](#)

**3 AAC 99.120. Financing preparation**

(a) An applicant for financing under the conduit revenue bond program must provide information requested by the authority and must notify the authority of any change in the project or the applicant that occurs after the original submission of the application that may affect the eligibility of the project or the applicant for participation in the conduit revenue bond program. The authority may request information that the authority considers necessary or appropriate to permit preparation of the necessary loan and bond documents. The authority will work with the

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applicant and the bond purchaser to prepare substantially completed drafts of the loan and bond documents for the applicant's project for presentation to the board under 3 AAC [99.130](#).

(b) The authority may terminate the application process if the authority determines that either the project or the applicant is not eligible for participation in the conduit revenue bond program or if the authority determines that the applicant has failed to provide the information required by (a) of this section or if the authority determines that the applicant has failed to cooperate with the authority sufficiently to permit preparation of the documents described in (a) of this section. The authority will notify the applicant if the authority terminates the application process.

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 2/11/99, Register 150; am 11/1/99, Register 153; am 12/3/2010, Register 197**

**Authority:** [AS 44.88.080](#)

[AS 44.88.085](#)

[AS 44.88.090](#)

[AS 44.88.095](#)

**3 AAC 99.130. Review by authority**

(a) The authority will determine the appropriate bond, loan, and other documents to be presented to the board for approval of a conduit bond financing. The executive director will present documents to the board in substantially final form, together with a bond authorization resolution. The bond authorization resolution is a resolution of the board that approves the bond and loan documents substantially in the form presented to the board of directors, and authorizes the authority to issue bonds under the conduit revenue bond program to provide financing for the proposed project.

(b) The board will review the bond, loan, and other documents presented to it and may adopt, decline to adopt, or postpone taking action on the bond authorization resolution. If the board postpones taking action on a bond authorization resolution for a project, the authority will work with the applicant to obtain additional information or materials necessary to permit the board to make a final determination with respect to the bond authorization resolution.

(c) If the board declines to adopt a bond authorization resolution, the authority will notify the applicant of that action.

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(d) If the board adopts a bond authorization resolution for a project, the authority may require that the applicant enter into an agreement in writing with the authority for the payment of fees and expenses of the authority relating to the issuance of the bonds and other administrative matters with respect to the financing. If a project approved by the authority requires the issuance of bonds that exceed \$6,000,000, the applicant must obtain and file with the authority a certified copy of a resolution consenting to the location of the project passed by the governing body of the political subdivision, if any, in which the project is located. If the project is located within two political subdivisions, the applicant must obtain and file with the authority a certified copy of a resolution consenting to the location of the project passed by the governing body of each political subdivision.

(e) If the bonds to be issued by the authority are intended to bear interest that is not included in gross income for federal income tax purposes under the code, the issuance of the bonds is conditioned upon compliance with the applicable provisions of the code.

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 7/19/91, Register 119; am 11/1/99, Register 153; am 12/3/2010, Register 197**

**Authority:** [AS 44.88.080](#)

[AS 44.88.085](#)

[AS 44.88.090](#)

[AS 44.88.095](#)

**3 AAC 99.135. Documentation**

The authority shall prepare all documents required and be responsible for the closing of the transaction.

**History: Eff. 11/30/90, Register 118; am 12/3/2011, Register 197**

**Authority:** [AS 44.88.080](#)

[AS 44.88.085](#)

[AS 44.88.090](#)

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**3 AAC 99.140. Costs and issuance fees**

(a) At the time the authority issues bonds to provide financing for a project under 3 AAC 99.100 - 3 AAC 99.160, the applicant shall pay an issuance fee determined as follows:

(1) if the bonds are subject to the volume cap provisions of 26 U.S.C. 147, the issuance fee is equal to one percent of the first \$1,000,000 of the principal amount of those bonds, one-half of one percent of the next \$4,000,000 of the principal amount of those bonds, one-quarter of one percent of the next \$10,000,000 of the principal amount of those bonds, and one-tenth of one percent of the principal amount of those bonds issued in excess of \$15,000,000;

(2) if the bonds are not subject to the volume cap provision of 26 U.S.C. 147, the issuance fee is equal to three-quarters of the amount described in 3 AAC 99.140(a) (1);

(3) if a portion of the bonds is subject to the volume cap of 26 U.S.C. 147 and a portion is not, the issuance fee is equal to the sum of the issuance fee determined under (1) of this subsection for the portion of the bonds that is subject to the volume cap provisions of 26 U.S.C. 147 and the issuance fee determined under (2) of this subsection for the remaining portion of the bonds.

(b) A person may apply to the authority to modify the terms of its pending application with the authority or to take an action relating to a bond previously issued by the authority. If the request is to modify the terms of a pending application and if the modification, in the sole determination of the authority, requires action by the board, the applicant shall pay to the authority a fee of \$200. If the request is for the authority to take an action relating to outstanding bonds and the authority, in its discretion, elects to take such action or, under the applicable documentation, is required to take such action, the applicant shall pay the reasonable costs of the authority, including costs for authority personnel, bond counsel costs, and other costs.

(c) An applicant shall pay other costs and fees prescribed by law or agreement that are not provided in (a) of this section. These costs or fees may include financial advisor fees, bond counsel fees, and other expenses of the authority related to bond issuance.

**History: In effect before 1988; am 1/11/88, Register 106; am 9/25/92, Register 124; am 11/1/99, Register 153; am 12/3/2010, Register 197**

**Authority: AS 44.88.080**

AS 44.88.085

AS 44.88.090

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AS 44.88.212

**3 AAC 99.150. Review by financial advisor**

Repealed 1/11/88.

**3 AAC 99.160. Composite bond issue**

(a) If the authority intends to issue bonds for a project under the tax-exempt loan participation program (3 AAC 99.200 - 3 AAC 99.290) or the taxable loan participation program (3 AAC 99.300 - 3 AAC 99.390), the project is eligible for a composite bond issue subject to approval by the authority, the originator, and the borrower.

(b) In a composite bond issue, the authority will issue bonds to finance all or part of the amount of the total loan to the borrower from the originator not financed under the tax-exempt loan participation program or the taxable loan participation program as described in (a) of this section. The originator shall purchase bonds issued under this subsection and must agree to retain those bonds as long as the total loan is outstanding.

(c) The issuance of bonds under (b) of this section is subject to the provisions of 3 AAC 99.100 - 3 AAC 99.140, except with regard to the financing fee. The financing fee for bonds issued under (b) of this section is one-half of one percent for the first \$1,000,000 of the principal amount of the bonds issued and one-quarter percent of the principal amount of the revenue bonds issued in excess of the first \$1,000,000.

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 12/3/2010, Register 197**

**Authority: AS 44.88.080**

AS 44.88.085

AS 44.88.090

AS 44.88.155