

98-063 - COMM 116 RURAL ECON. DEVELOPMENT FUND

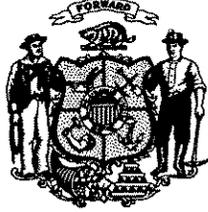
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-063

AN ORDER to repeal Comm 116.04 (3); to amend Comm 116.03 (intro.) and (1) to (4), 116.035 (intro.) and (1) to (3) and 116.06 to 116.10; to repeal and recreate Comm 116.02 (4), 116.04 (1) and (2) and 116.05 (2) and (3); and to create Comm 116.02 (1m), (2m), (3h) and (3m), 116.037 and 116.05 (4) and (5), relating to the rural economic development fund.

Submitted by **DEPARTMENT OF COMMERCE**

04-29-98 RECEIVED BY LEGISLATIVE COUNCIL.
05-28-98 REPORT SENT TO AGENCY.

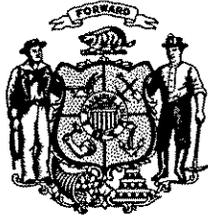
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CLEARINGHOUSE RULE 98-063

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. SECTION 5 states that "Comm 116.03 (intro.), (1), (2), (3) and (4)" are amended. However, the provision does not amend s. 116.03 (intro.); there is no such provision. The correct format is to state that "Comm 116.03 (1) to (4)" are amended.

b. In s. Comm 116.04 (1), the second and third occurrence of the notation "s. Comm" should be deleted. Also, in sub. (2), the second occurrence of the notation "s. Comm" should be deleted. Finally, the numeral "8" should be inserted following the word "SECTION" in the treatment clause that repeals and recreates s. Comm 116.04 (1) and (2).

c. Section Comm 116.04 (2) provides that an applicant for a grant or loan must submit an application for funding addressing all instructions and items in an application manual provided by the department. Current application requirements in s. Comm 116.04 (3) are repealed. If any portions of the manual have the effect of law and meet the definition of a rule, those portions should be promulgated as rules. [See ss. 227.01 (13) and 227.10 (1), Stats.]

d. SECTION 12 of the rule states that "Comm 116.06, 116.07, 116.08, 116.09 and 116.10" are amended. However, the provision does not amend s. Comm 116.10. Thus, either that provision should be included in the rule or that section should be deleted from the enumerated sections.

e. The analysis to the rule states that these rules will not affect small businesses. However, s. 227.114 (1) (a), Stats., defines a small business as one which employs fewer than 25

full-time employes or which has gross annual sales of not less than \$2,500,000. Since the rule expands eligibility of businesses to include those with up to 50 employes and some of those businesses may meet the alternative definition in s. 227.114 (1) (a), Stats., of having less than \$2,500,000 in annual sales, the rule has two potential effects: (1) it may cause the available funds to be spread among more businesses because of the increased competition caused by the expansion of eligibility; and (2) it will make some "small" businesses eligible for the plan that previously were not. Therefore, the initial regulatory flexibility analysis statement does not appear to be accurate.

- f. The rule does not contain an effective date provision. [See s. 1.02 (4), Manual.]

NOTICE OF PUBLIC HEARING

NOTICE IS GIVEN that pursuant to ss. 560.02 and, Stats., the Department of Commerce proposes to hold public hearings to consider the proposed rules to amend COMM 116, Wis. Adm. Code, relating to the Rural Economic Development Program.

Hearing Information

The public hearings are scheduled as follows:

Date: June 17, 1998	June 18, 1998
Time: 9:00 a.m.	9:00 a.m.
City: Wausau, WI	Pewaukee, WI
Facility: North Central Technical College	Waukesha County Technical College
Street Address: 1000 W. Campus Drive	800 Main Street
Building Name: Health Resource Center	Industrial Occupations Building
Room Number: D 105	I 131

Written Comments and Copies of Rule

A copy of the rules to be considered may be obtained from the Department of Commerce, Bureau of Policy and Budget Development, P. O. Box 7970, Madison, Wisconsin 53707, by calling (608) 267-9382 or at the appointed times and places the hearings are held.

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearings, or who wish to supplement testimony offered at the hearings, may be submitted no later than June 30, 1998, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Ms. Louie Rech, Bureau of Policy and Budget Development, Department of Commerce, P. O. Box 7970, Madison, Wisconsin 53707. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 267-9382 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis Prepared by the Department of Commerce

Statutory Authority: Section 560.17, Stats., creates the Rural Economic Development program. Section 560.02 (4) authorizes the Department to promulgate rules required to administer its programs and activities.

The proposed rule makes changes to the Rural Economic Development program. The changes are the result of statutory changes made to the program in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rule and to make the rules for this program uniform with the rules for the Department's other financial assistance programs.

The significant changes in the proposed rule include:

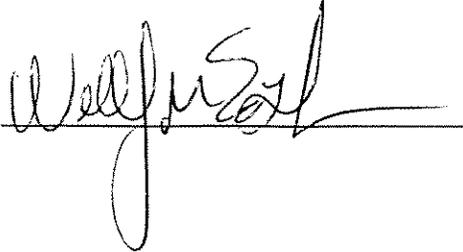
1. The eligibility requirements were changed to increase the size of eligible applicants from 25 employees to 50 employees, and to increase the size of eligible communities from 4,000 to 6,000 population.
2. The matching requirement was changed from 25 percent of the funds received to 25 percent of the total project cost.
3. Priority for funding will be given to brownfield projects.
4. The program for professional services such as feasibility studies and business plans was changed to a grant only program (Early Planning Grants), rather than a grant or loan program.
5. The maximum amount that can be provided for Early Planning Grants is decreased to \$15,000 from the previous maximum of \$30,000.
6. The micro-loan program that provides assistance for working capital and fixed assets, was made a grant or loan program rather than a loan program.
7. The maximum amount that can be provided for a Micro Loan program is increased from \$25,000 to \$100,000. ✓
8. A new grant program was created for dairy farms or other agricultural business projects. The proceeds of this grant may only be used for professional services or management assistance related to the start-up, expansion, or modernization of the dairy farm or agricultural business. The applicant must provide at least 25 percent of the total cost of the project.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules. These rules will not affect small businesses. ✓
2. Reporting, bookkeeping and other procedures required for compliance with the rules: These rules will impose no new requirements.
3. Types of professional skills necessary for compliance with the rules: No professional skills are required to comply with the rules.

Fiscal Estimate

The rules make program and procedural changes to the administrative rules for the Rural Economic Development Program. The changes proposed by these rules will have no fiscal effect on the Department or on businesses that apply for funding under the program.

Secretary's Signature:  Date: 4/27/18

COMMERCE

Rule Submittal Date

On April 27, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Legislative Council rules Clearinghouse affecting Ch. COMM 116, Wis. Adm. Code, relating to the rural economic development program.

Analysis

Statutory Authority: Section 560.17, Stats., creates the Rural Economic Development program. Section 560.02 (4) authorizes the Department to promulgate rules required to administer its programs and activities.

The proposed rule makes changes to the Rural Economic Development program. The changes are the result of statutory changes made to the program in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rule and to make the rules for this program uniform with the rules for the Department's other financial assistance programs.

The significant changes in the proposed rule include:

1. The eligibility requirements were changed to increase the size of eligible applicants from 25 employees to 50 employees, and to increase the size of eligible communities from 4,000 to 6,000 population.
2. The matching requirement was changed from 25 percent of the funds received to 25 percent of the total project cost.
3. Priority for funding will be given to brownfield projects.
4. The program for professional services such as feasibility studies and business plans was changed to a grant only program (Early Planning Grants), rather than a grant or loan program.
5. The maximum amount that can be provided for Early Planning Grants is decreased to \$15,000 from the previous maximum of \$30,000.
6. The micro-loan program that provides assistance for working capital and fixed assets, was made a grant or loan program rather than a loan program.
7. The maximum amount that can be provided for a Micro-Loan program is increased from \$25,000 to \$100,000.
8. A new grant program was created for dairy farms or other agricultural business projects. The proceeds of this grant may only be used for professional services or

management assistance related to the start-up, expansion, or modernization of the dairy farm or agricultural business. The applicant must provide at least 25 percent of the total cost of the project.

Agency Procedure for Promulgation

A public hearing is required.

Contact Person

Louie Rech
Department of Commerce
Telephone (608) 267-9382

Pursuant to the authority vested in the Department of Commerce by ss. 560.02 (4) and 227.11 (2), Stats., the Department of Commerce hereby creates rules interpreting s. 560.17, Stats.

SECTION 1. Comm 116.02 (1m) is created to read:

(1m) "Brownfields" has the meaning given in s. 560.60 (1v), Stats.

SECTION 2. Comm 116.02 (2m) is created to read:

(2m) "Dairy farm" has the meaning given in s. 97.22 (1) (a), Stats.

SECTION 3. Comm 116.02 (3h) and (3m) are created to read:

(3h) "Financing is unavailable from any other source on reasonably equivalent terms" means the maturity, rate or the amount of available financing or requirements related to the financing, such as collateral, equity, closing costs, service charges and repayment schedules offered on such financing are materially different from the financing available from the rural economic development program.

(3m) "Job" has the meaning given in s. 560.60 (10), Stats.

SECTION 4. Comm 116.02 (4) is repealed and recreated to read:

(4) "Management assistance" has the meaning given in s. 560.20 (1) (cf).

SECTION 5. Comm 116.03 (intro.), (1), (2), (3) and (4) are amended to read.

COMM 116.03 GRANTS FOR PROFESSIONAL SERVICES. (1) Rural economic development grants ~~and loans~~ made under this section may be for up to ~~\$30,000~~ \$15,000. A cash ~~or in-kind match, from a source other than the state, of equal to~~ not less than 25% of the funds received eligible project cost is required.

(2) To be eligible to apply for funding under this ~~chapter~~ section, a business, together with any affiliate, subsidiary or parent entity shall have fewer than ~~25~~ 50 employees, shall be located in a rural municipality and shall be in the process of starting or expanding operations.

(3) The proceeds of a grant ~~or loan~~ made under this section may be used only for professional services related to the startup or expansion of ~~the a~~ a business ~~which has made application or for~~ management assistance required for the continued operation of ~~that a~~ a business and only in accordance with the terms of the contract required under s. Comm 116.06.

(4) The terms and conditions of each grant ~~and loan~~ made under this section, ~~including repayment terms,~~ shall be determined by the board after considering the circumstances of the business for which application has been made.

SECTION 6. Comm 116.035 (intro.), (1), (2) and (3) are amended to read:

116.035 (intro) LOANS AND GRANTS FOR WORKING CAPITAL, EMPLOYEE RELOCATION COSTS OR FIXED ASSET FINANCING. (1) Loans and grants made under this section may be for up to ~~\$25,000~~ \$100,000. A cash ~~or in-kind~~ match, from a source other than the state, of not less than ~~50%~~ 25% of the ~~funds received~~ eligible project cost is required.

(2) To be eligible to apply for funding under this section, a business shall meet the requirements of s. Comm. 116.03 (2), ~~shall have received funding under s. Comm 116.03, with the proceeds of such funding~~ shall have successfully demonstrated the feasibility of the business, and shall not be able to obtain financing from any other source on reasonably equivalent terms.

(3) The proceeds of a loan or grant made under this section may be used only for working capital, employe relocation costs or fixed asset financing related to the start up or expansion of the business for which application has been made and only in accordance with the terms of the contract required under s. Comm 116.06.

SECTION 7. Comm 116.037 is created to read:

116.037 (title) GRANTS FOR DAIRY FARM OR OTHER AGRICULTURAL BUSINESS PROJECTS. (1). Grants made under this section may be made for dairy farm or other agricultural business projects. A cash match, from a source other than the state, of not less than 25 percent of the eligible project cost is required.

(2) The proceeds of a grant made under this section may be used only for professional services related to the start-up, modernization or expansion of the dairy farm or other agricultural business; or for management assistance, as defined in s. 560.20 (1) (cf), continuing after the completion of the start-up, modernization or expansion of the dairy farm or other agricultural business; and only in accordance with the terms of the contract required under s. Comm 116.06.

(3) The terms and conditions of each grant made under this section shall be determined by the board after considering the circumstances of the business for which application has been made.

SECTION . Comm 116.04 (1) and (2) are repealed and recreated to read:

(1) A business which is eligible for funding according to s. Comm 116.03, ~~Comm~~ 116.035 or ~~s. Comm~~ 116.037, may make application to the department at any time!

(2) Eligible applicants for grants under s. Comm 116.03 or ~~Comm~~ 116.037, and for loans and grants under s. Comm 116.035 shall submit an application for funding that addresses all the instructions and items in an application manual provided by the department.

SECTION 9. Comm 116.04 (3) is repealed.

SECTION 10. Comm 116.05 (2) and (3) are repealed and recreated to read:

(2) Before awarding a grant under s. Comm 116.03, the board shall consider each of the items in s. 560.17 (4), Stats.

(3) Before awarding a loan or grant under s. Comm 116.035, the board shall consider each of the items in s. 560.17 (4), Stats.

SECTION 11. Comm 116.05 (4) and (5) are created to read:

(4) Before awarding a grant under s. Comm 116.037, the board shall make the determinations in s. 560.17 (5c) (a).

(5) The board shall give priority to grants and loans under this chapter for projects related to brownfields development.

SECTION 12. Comm 116.06, 116.07, 116.08, 116.09 and ~~116.10~~ are amended to read:

116.06 CONTRACTS. Successful applicants shall be required to enter into a contract with the department for the purposes of implementing the proposed grant or loan. The ~~contracts~~ contract shall be signed by the secretary of the department and the ~~chief executive officer of the successful applicant, or by their authorized representatives~~ person or persons authorized by the applicant to enter into a contract. The contract shall contain default provisions relating to nonperformance of the provisions of the contract. ~~The department may void a contract and seek a return of any funds released under the contract for failure by the business to perform its obligations under the contract.~~ Amendments to these contracts may be adopted by the written consent of both parties.

116.07 REPORTING. Each successful applicant will be required to provide the department periodic ~~financial~~ reimbursement documentation and program reports. The ~~financial reimbursement documentation~~ and program reports shall be submitted to the department by a date specified in the contract. The ~~financial~~ reimbursement documentation and program reports become the property of the department and are open to public inspection.

116.08 ADMINISTRATION. The department shall be responsible for soliciting applications, reviewing applications, making recommendations to the board on the disposition of ~~grants~~ grant and loan applications, entering into contracts with successful applicants, authorizing payments and otherwise implementing contractual obligations entailed in grants or loans made under the terms of this chapter, monitoring project activities, receiving and reviewing the ~~financial reports~~ reimbursement documentation and program reports submitted under s. Comm 116.07, and for collecting any repayments of grants and loans from successful applicants.

116.09 BOARD OPERATIONS. The board shall consider the recommendations of the department relating to grants and loans. The board shall approve an application before the department can enter into a contract for a grant or loan. The department shall maintain records of the board's proceedings and provide ~~other~~ staff support as may be necessary to the board.