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Clearinghouse Rule 22-065

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

PROPOSED ORDER OF THE DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION ADOPTING RULES

PROPOSED ORDER

- 2 An order of the department of agriculture, trade and consumer protection *to repeal* Chapter ATCP
3 161, Subchapters I, IV, V and VI, *to repeal and recreate* Chapter ATCP 161 (title), and *to create*
4 Chapter ATCP 163 *relating to* grants.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutes Interpreted: ss. 93.07 (18) (b), 93.40 (1) (g), 93.48, 93.49, and 93.68, Stats.

Statutory Authority: ss. 93.07 (1), 93.07 (18) (b) 6. and 7., 93.48 (1), and 93.49 (4) Stats.

Explanation of Agency Authority

The department has general rule making authority under s. 93.07 (1) to make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the full force of law.

The department has the authority under s. 93.07 (18) (b) 6., Stats., to establish by rule requirements for recipients of a grant of at least \$100,000 to submit to the department a verified statement. The department has the authority under s. 93.07 (18) (b) 7., Stats., to establish by rule policies and procedures for a grant recipient who submits false information or misleading information to the department or fails to comply with the terms of a contract entered into with the department and fails to provide to the satisfaction of the department an explanation for the noncompliance.

The department has the authority under s. 93.48 (1), Stats., to promulgate rules for the buy local grant program and under s. 93.49, Stats., to promulgate rules for the farm to school grant.

Related Statutes and Rules

N/A

Plain Language Analysis

The proposed rule removes the grant programs from ch. ATCP 161 and creates a new chapter (ATCP 163) for grants to create clarity between the grant programs and the Something Special from Wisconsin program. The proposed rule also creates general requirements for the agricultural and economic development grants administered by the department's division of agricultural development rather than each program having its own requirements in order to create consistency. The statutes already provide specific requirements for the buy local and farm to school grants relating to the specific purposes for awarding the grants.

The proposed rule provides for the department to issue a request for proposals at least once during every state fiscal biennium. The request for proposals must include a deadline and address for submitting a proposal, contact information for a department representative, applicant criteria for grant eligibility, a description of the grant objectives or eligible projects, format and content requirements for the proposal, and any other terms or conditions that are relevant. The department will issue a general news release announcing the request as well as post it on the department's website. In addition, the department will mail or email it to anyone who requests it.

The proposed rule states the department will evaluate grant proposals submitted and announce the results within 90 days of the proposal deadline. When conducting the evaluation, the department is required to consider: whether the proposal complies with the request for proposals and meets the grant's objectives; the viability of the project; the adequacy of the project and budget; the financial capacity to complete the project; the qualifications of the persons carrying out the project; whether the reimbursable expenses are identified; and the capacity to provide any required matching funds. The grant award letter is signed by the department's secretary, deputy secretary or assistant deputy secretary and includes the person receiving the grant, the amount of the grant and the purpose for the grant. No funding commitment is final until a contract is signed.

The department is prohibited from releasing any funds until there is a grant contract between the grant recipient and the department. The contract term is for two years but may be extended one additional year upon request. The contract term may extend beyond the biennium the funds were appropriated in as long as the department encumbered the funds.

The contract must include: the recipient, the amount of the grant, actions required of the recipient, any matching funds, the expected deliverables, payment schedule and conditions for receiving funds, repayment requirements, and all required documentation, reports and accounting. A verified statement, signed by an independent certified public accountant and director or principal officer of the grant recipient, is required for grants more than \$100,000. The verified statement must include: the amount of funds received; an itemized description showing how the funds were spent; the nature and amount of matching funds; and documentation of the deliverables provided by the recipients. If a loan recipient submits false or misleading information to the department or fails without reasonable justification to comply with the terms of the contract, the department can: recoup payments made to the recipient; withhold payments to be made to the recipient; or impose a forfeiture on the recipient.

On an annual basis, the department will review a sample of grants to determine the accuracy of the information reported to the department.

Grant proposals are open to public inspection after the grants are awarded. The department may withhold access to portions of a proposal application that contains trade secrets identified by the grant applicant.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The federal government has a variety of types of grants with requirements outlined in Title 2 of the Code of Federal Regulations . Generally, federal requirements for the request for grant proposal, evaluation of the submitted proposal, and contracts are similar to the proposed rule.

Summary of Public Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope

The Joint Committee for Review of Administrative Rules did not request a preliminary hearing on the scope. The department did not hold a preliminary hearing on the scope.

Comparison with Rules in Adjacent States

Illinois. Illinois agricultural grant applications require information reasonably related to a determination of applicant or project feasibility. The department may request the applicant to present an oral presentation to the review committee of the project. Public notice of the availability of funding and the application due dates are published in the state newspaper and on the department's website. The evaluation of the proposal includes: a determination the project meets the objectives; applicant demonstrates a personal commitment match; an adequate and realistic budget has been projected; and the applicant and project meets eligibility requirements. The contract specifies the following: the payment will be made on a reimbursable basis; what constitutes permissible expenditures of grant funds; the project scope and schedule; the grant amount; the conditions, timing, and manner in which the funds will be paid; terms of the agreement; and the dates for submitting progress reports and other requirements. The department has the authority to audit records related to the project. In the case of breach of contract, the department can cease payments; institute recovery of grant funds; and take any other action considered appropriate to protect the department's interest in the project.

Iowa. Iowa agriculture grant applications require the applicant and project meet statutory requirements. The grant applications are evaluated based upon stated criteria in the request for grant proposals. The contract requirements include: identification of grant recipient; project description; total cost of the project; project completion deadline; project completion requirements as preconditions for payment; and penalties for breach of contract.

Michigan. Michigan's administrative code does not include procedures for agriculture grants. However, the Department of Agriculture and Rural Development's website does indicate procedures for request for grant proposals, evaluation, and contracts similar to this proposed rule.

Minnesota. Minnesota agricultural development grant application requires the following: identifiable information of applicant; name of individual authorized to negotiate and sign contracts; project description; description of qualifications of personnel who will be assigned the project; a budget showing total project costs and contributions; documentation of financial condition of the applicant and any other information reasonably related to a determination of applicant or project eligibility or project feasibility. The criteria utilized in the evaluation of the application include: whether the applicant and project are eligible and meet the contribution requirements; whether the project is feasible and likely to produce the desired objective; the degree to which the proposed project employs novel, creative and innovative ideas; the degree to which the proposed project would have a generic impact upon the sector for which it is proposed; whether the experience or capability of the applicant make it likely the project will have a successful completion; whether the proposed budget is adequate to accomplish the proposed project; the degree to which similar or related projects by this applicant or other persons have been successful or unsuccessful; whether the applicant appears able to apply generally accepted accounting principles and appears financially qualified for the project; and the applicant's past performance as a grantee under the program, if applicable. The commissioner shall notify the applicant in writing of the approval or disapproval of the grant application. Each approved grant must be governed by a contract with the following terms specified: The total amount of the grant and the timing of grant payments; the starting and termination dates of the contract; dates for submitting progress reports; a list of the eligible costs of the project; and a statement that the grantee must inform the commissioner of any significant change in implementation of the project, and must obtain prior approval before initiating the change. If there is a breach of contract, the commissioner may modify the terms of the grant contract as necessary to assure that project objectives are met, may terminate the contract, or may seek a legal remedy in a court of competent jurisdiction. If there is misrepresentation by applicant or grantee, the commissioner do one or more of the following: reject the application, conduct an examination of the use of grant funds; modify the terms of the contract as necessary to assure that project objectives are met; terminate the grant contract; or recover grant funds through available legal remedies.

Summary of Factual Data and Analytical Methodologies

This proposed rule was developed by reviewing current practices and standards for grant proposals and evaluations, contracts, and audit procedures.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

Small business participation in grant programs is voluntary. The current rule was reviewed to address burdensome requirements.

The rule was posted on the department's website for economic comments for 14 days.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

This proposed rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats.

The Department's Regulatory Review Coordinator may be contacted by:

Email at Bradford.Steine1@wisconsin.gov

Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

Sharon Henes, Program and Policy Analyst - Advanced
Division of Agricultural Development
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
(608) 381-2808
Sharonm.Henes@wisconsin.gov

Place Where Comments are to Be Submitted and Deadline for Submission:

Comments must be received on or before October 27, 2022 to be included in the record of rule-making proceedings. Submit comments:

By mail to:

Sharon Henes, Program and Policy Analyst - Advanced
Division of Agricultural Development
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

By email to: Sharonm.Henes@wisconsin.gov

TEXT OF RULE

1 SECTION 1. Chapter ATCP 161 (title) is repealed and recreated to read:

2 SOMETHING SPECIAL FROM WISCONSIN

3 SECTION 2. ATCP 161 Subchapters I, IV, V and VI are repealed.

4 SECTION 3. Chapter ATCP 163 is created to read:

5 Chapter ATCP 163

6 AGRICULTURAL DEVELOPMENT

7 **ATCP 163.01 Definitions.** In this chapter:

8 (1) "Authorized department official" means the department secretary, deputy secretary, or assistant
9 deputy secretary.

10 (2) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

11 (3) "Grants" means grants for agricultural or economic development.

12 Note: Grants that are administered by the Division of Agricultural Development.

13 (4) "Grant applicant" means a person who submits a grant proposal.

14 (5) "Matching funds" means the cash value of the project contributed by the grant award recipient.
15 A matching contribution may be in the form of capital, land, labor, equipment or cash related to
16 the grant project.

17 (6) "Person" means an individual, corporation, cooperative, partnership, limited liability company,
18 trust, governmental entity, academic institution, or other legal entity.

19 (7) "Recipient" means a person who receives a grant.

20 **ATCP 163.02 Grant proposals.** (1) The department may at any time, issue a request for grant
21 proposals. The department shall issue a request for grant proposals at least once during every state
22 fiscal biennium for which grant funding is appropriated. A request for grant proposals shall include
23 all of the following:

24 (a) A deadline date for submitting a grant proposal.

25 (b) An address for submitting a grant proposal.

26 (c) The name, business mailing address, business email address, and business telephone number
27 of a department representative who can provide more information or answer questions about the
28 request for grant proposal.

29 (d) The applicant criteria for grant eligibility.

30 (e) A description of grant objectives or eligible projects.

31 (f) The format and content requirements for the proposal.

32 (g) Other terms and conditions that the department determines to be relevant.

33 (2) The department shall issue a general news release announcing the request for grant proposals.
34 The request for grant proposals shall be available on the department's website. The department
35 shall mail or email the request for grant proposal to any person requesting it.

36 **ATCP 163.03 Evaluating grant proposals. (1)** The department shall evaluate grant proposals
37 submitted and shall announce its grant awards within 90 days after the deadline date specified in
38 the request for grant proposals.

39 (2) In its evaluation under sub. (1), the department shall consider all of the following criteria:

40 (a) Whether the proposal complies with the department's request for proposals.

41 (b) Whether the proposed project will meet the grant's objectives as listed in the request for
42 proposal.

43 (c) The viability of the proposed project.

44 (d) The adequacy of the project plan and budget.

45 (e) The financial capacity of the grant applicant to complete the project as proposed.

46 (f) The qualifications of the persons who will carry out the project as proposed.

47 (g) Whether the grant proposal adequately identifies the nature of project expenses to be
48 reimbursed under the proposed grant.

49 (h) The grant applicant's capacity to provide any required matching funds. The matching
50 contribution may include grant funds from sources other than the department.

51 (3) A grant award shall be signed by an authorized department official. The grant award shall
52 clearly identify the person to whom the grant is awarded, the amount awarded, and the purpose for
53 which the grant is awarded. No funding commitment is final until a contract is executed.

54 **ATCP 163.04 Grant Contract. (1) GENERAL.** The department may not distribute any grant funds
55 to the recipient of a grant award until the recipient enters into a grant contract with the department.
56 The grant contract takes effect when signed by an authorized department official and the grant
57 recipient. A grant contract may be signed by an authorized department official after the grant
58 recipient signs the contract.

59 (2) **CONTRACT PERIOD.** The original term of a contract is two years, but may be extended for up to
60 one year upon request. The contract term may extend beyond the state fiscal biennium in which
61 funds for the contract are appropriated, provided that the department encumbers those contract
62 funds and the contract is signed in that biennium.

63 (3) **PROVISIONS.** The grant contract shall include all of the following:

64 (a) Clearly identify the recipient.

65 (b) Clearly identify the amount of the grant.

66 (c) Set forth the terms and conditions of the grant including all of the following:

67 1. Actions required of the recipient, including contemplated uses of the grant funds.

68 2. Matching funds, if any, required of the recipient.

69 3. Expected deliverables.

70 4. Payment schedule and conditions, including the distribution of funds in multiple payments based
71 on documented progress toward completion of the grant project.

72 5. Repayment requirements, if any.

73 6. Documentation, reports, and accounting required of the recipient including the frequency and
74 format of the report and the performance measures to be included in the report.

75 **(4) REQUIREMENTS FOR LARGE GRANTS.** For each grant of \$100,000 or more, the contract shall
76 include in addition to sub. (3), all of the following:

77 (a) A requirement that the recipient submit a verified statement accounting for the use of all grant
78 funds received. The verified statement shall include all of the following:

79 1. The amount of funds received.

80 2. A clear itemized description showing, by expenditure category, how all received funds were
81 spent.

82 3. The nature and amount of any matching funds provided by the recipient, and the recipient's use
83 of those matching funds.

84 4. Documentation of the deliverables provided by the recipient under the contract, and the dates
85 on which the recipient provided those deliverables.

86 5. Signatures of an independent certified public accountant licensed or certified under ch. 442,
87 Stats., and the director or principal officer of the recipient to attesting to the accuracy of the verified
88 statement.

89 (b) The timeframe in which the verified statement, in a form required by the department, shall be
90 submitted to the department.

91 (c) A statement that documents supporting the verified statement shall be made available to the
92 department upon request.

93 **(5) PENALTIES FOR FALSE OR MISLEADING STATEMENTS OR CONTRACT BREACH.**

94 (a) A grant contract may provide for any of the following penalties or remedies if the grant
95 recipient submits false or misleading information to the department or fails without reasonable
96 justification to comply with the terms of the contract:

97 1. The department may demand and recoup payments made to the recipient.

98 2. The department may withhold payments to be made to the recipient to which the recipient would
99 otherwise be entitled under the contract.

100 3. The department may impose a forfeiture on the recipient. A recipient may not pay any forfeiture
101 under this subdivision with funds received under another grant or loan from the department.

102 (b) The specification of penalties or remedies under this subsection does not prevent the
103 department from pursuing any other remedy to which the department may otherwise be entitled by
104 law.

105 **ATCP 163.05 Verification.** The department shall annually, and independently verify, from a
106 sample of grants, the accuracy of the information reported to the department as required under the
107 contract.

108 **ATCP 163.06 Public access.** All grant proposal applications are open to public inspection after
109 the awarding of grants. The department may withhold access to any proposal application or portion
110 of a proposal application containing information qualifying as a trade secret as defined in s. 134.90

111 (1) (c), Stats. Grant applicants shall identify those portions of a proposal application that contain a
112 trade secret and claim the exemption from public inspection at the time of filing a grant proposal
113 application with the department.

114 SECTION 4. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day
115 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22

116 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated this _____ day of September, 2022.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary