

98-007 (COMM 110) BROWNFIELD
GRANT



May 1, 1998

Senator Robert Welch
Co-Chairman
Joint Committee for Review of Administrative Rules
Room 201
1 East Main
Madison, WI 53707

MAY 04 1998

Representative Glenn Grothman
Co-Chairman
Joint Committee for Review of Administrative Rules
Room 125 West, State Capitol
Madison, WI 53707

Dear Senator Welch and Representative Grothman:

As you may know, the Department adopted an emergency rule relating to the Brownfields Grant Program pursuant to 1997 Wisconsin Act 27. The rule was developed in concert with the Department of Administration and the Department of Natural Resources as directed by the Statutes. The emergency rule took effect on December 31, 1997 and is currently in effect. The emergency rule will expire on May 30, 1998, unless an extension is granted by the Joint Committee for Administrative Rules.

Since adoption of the emergency rule and pursuant to chapter 227, Stats., the Department has filed a proposed permanent rule (Clearinghouse Rule Number 98-007) to replace the emergency rule with the Wisconsin Legislative Council, held a hearing on that rule on February 12, 1998 and has filed a final rule with the Legislature for review on April 23, 1998.

The Joint Committee for Review of Administrative Rules (JCRAR) requests that agencies make formal requests in advance prior to the expiration of an emergency rule. Under s. 227.19 (4), Stats., the legislative standing committees have 30 days to review the final rule before the agency may adopt the rule. Following the rulemaking process in ch. 227, Stats., the permanent rule cannot be adopted and placed in effect prior to the expiration of the emergency rule.

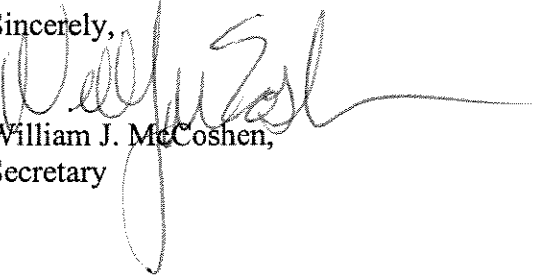
In light of these facts, we respectfully request an extension of the emergency rule under s. 227.24 (2), Stats., until the permanent rule takes effect in order to preserve the public peace and provide a smooth and orderly transition from the emergency rule to the permanent rule.

Robert Welch
Glenn Grothman

Some 42 applications have been received for Brownfields grants under the emergency rule. Granting this extension request will enable Commerce to award the first grants in mid-May and allow successful applicants to begin the actual process of brownfields redevelopment and environmental remediation. It is our belief that is important not to change the ground rules established in the emergency rule for those communities that took the time and initiative to develop and submit proposals. By granting this request, the JCRAR can play a vital and important role in the success of implementing this earmark legislation.

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. McCoshen", with a long horizontal flourish extending to the right.

William J. McCoshen,
Secretary

DEPARTMENT OF COMMERCE EMERGENCY RULE RELATING TO THE BROWNFIELDS GRANT PROGRAM

Pursuant to Section 227.24, Stats., the Department of Commerce (Commerce) hereby adopts an emergency rule to create Chapter 110 Wisconsin Administrative Code, relating to the Brownfields Grant Program.

Explanation for Emergency Rule

On October 14, 1997, 1997 Wisconsin Act 27, took effect. That act created Section 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the biennium that can be distributed by Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires Commerce to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the Department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under Chapter 227, Stats., and exempts the Department from making a finding of an emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration.

Analysis of Rules

Statutory Authority: Section 560.13, Stats.

Statutes Interpreted: Section 560.13, Stats.

Pursuant to Section 560.13, Stats., the Department of Commerce has authority to award grants for brownfields redevelopment or associated environmental remediation to any. Chapter 110, titled "Brownfields Grant Program", Wisconsin Administrative Code is being created to establish the criteria the Department will use until permanent rules can be adopted under the procedures outlined in Chapter 227, Stats.,. This chapter includes the same definitions contained in the Statutes necessary to implement the law. In addition, these rules delineate the criteria the Department will consider in the awarding of grants, including the content and information required from applicants, the conditions of contract under the grant, and reporting and auditing of implementing the grant in terms of periodic financial and program reports.

Contact Person

Dennis W. Kozich, Chief Legal Counsel, Department of Commerce – 608/266-3203.

ORDER

Pursuant to the authority vested in the Department of Commerce by Section 560.13, Stats., the Department of Commerce hereby creates Chapter Comm 110, Wisconsin Administrative Code, relating to the Brownfields Grant Program.

SECTION 1. Chapter Comm 110 Wisconsin Administrative Code is created to read:

Chapter COMM 110

BROWNFIELDS GRANT PROGRAM

Comm 110.01 PURPOSE. Pursuant to section 560.13, Stats., the purpose of this chapter is to set forth the criteria for issuing grants for brownfields redevelopment or associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment.

Comm 110.02 DEFINITIONS. In this chapter:

(1) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(2) "Brownfields redevelopment" means any work or undertaking by a person, municipality or local development corporation to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate or rehabilitate the facility or existing buildings, structures or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial or other purposes. "Brownfields redevelopment" does not include construction of new facilities on the site for any purpose other than environmental remediation activities .

(3) "Department" mean the department of commerce.

(4) "Environmental remediation activities" means investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environmental pollution; abating, removing, or containing environmental pollution at a brownfields facility or site; or restoring soil or groundwater at a brownfields facility or site.

(5) "In-kind contribution" means actual remediation services performed by a person qualified to provide such services under federal, state and local laws. These services may include, but are not limited to:

- (a) providing treatment services of contaminated groundwater;
- (b) operating remediation services;
- (c) excavating or hauling soil or other materials;
- (d) surveying;
- (e) conducting demolition activities;
- (f) providing site security or site maintenance; and
- (g) performing investigation activities.

(6) "Local development corporation" means a non-profit corporation organized under ch. 181, Stats., that does all of the following:

- (a) Operates within specific geographic boundaries.
- (b) Promotes economic development within the specific geographic area.

(c) Demonstrates a commitment to or experience in the redevelopment of brownfields.

(7) "Municipality" means a city, village, town or county.

(8) "Person" means an individual, partnership, corporation or limited liability company.

(9)(a) "Phase 1 environmental assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.

(b) "Phase 2 environmental assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase 1 environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

(10) "Project" means any brownfields redevelopment or environmental remediation activities undertaken on a site by or at the direction of an eligible recipient under section 560.13 (2) (a), Stats.

(11) "Recipient match" means the contribution required under section 560.13 (2) (b), Stats.

Comm 110.03 GRANT PROCESS. The department shall consider the following criteria before awarding a grant:

(1) The potential of the project to promote economic development including; but not limited to, job creation, wages and benefits, impact on distress in the area, local and private investment, increase in taxable property, impact on the community, and other factors the Department considers relevant.

(2) Whether the project will have a positive effect on the environment.

(3) The quality and amount of the recipient's contribution to the project to include the cost of activities undertaken by or at the direction of the recipient.

(4) The innovativeness of the recipient's proposal for remediation and redevelopment including; but not limited to, proposed reuse, public/private partnership and other factors the Department considers relevant.

Comm 110.04 ASSESSMENT SERVICES. Grant proceeds may only be used for assessment services that are to be incurred following the completion of phase 1 and phase 2 environmental assessments.

Comm 110.05 CONTRACTS. Each successful applicant shall enter into a contract with the department for the purpose of implementing the proposed grant under this subchapter. Each contract shall be signed by the secretary of commerce and the chief executive officer of the eligible recipient, or by the authorized representative of the eligible recipient. The department may void a contract and seek a return of any funds released under the contract for failure by the grant recipient to perform its obligations under the contract.

Comm 110.06 REPORTING AND AUDITING. A successful applicant for a grant under this subchapter shall provide the department semi-annual financial and program reports. A financial audit and final program report shall be submitted at the end of each contract. The financial audit and the program reports become the property of the department and are open to public inspection.

Comm 110.07 ELIGIBILITY. The department may grant an award to a person, municipality, or local development corporation if all of the following apply:

- (a) The recipient uses the grant proceeds for brownfields redevelopment or associated environmental remediation activities.
- (b) All of the following are unknown, cannot be located or are financially unable to pay the cost of brownfields redevelopment or associated environmental remediation activities:
 1. The party that caused the portion of the environmental contamination that is the basis for the grant request.
 2. Any person who possessed or controlled the environmental contaminant that is the basis for the grant request before the contaminant was released.
- (c) The recipient contributes to the cost of the project in cash or in-kind.

Comm 110.08 APPLICATION CONTENT. Applications from eligible applicants shall be submitted to the department. Each application shall contain all of the following:

- (1) The name, address, and designated contact person of the eligible applicant.
- (2) A description of the proposed project, including all of the following:
 - (a) The location and duration of the project.
 - (b) The brownfields redevelopment and environmental remediation activities that the eligible applicant is seeking grant funds for.
 - (c) An itemized estimate of the proposed cost of each project activity.
 - (d) A description of the proposed match, and the qualifications of the persons conducting any in-kind services.
 - (e) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.
 - (f) The amount and availability of the expenditures required for local infrastructure relating to the project.
 - (g) The immediate and continuing effects of the project upon the political subdivisions within which it will be located.
 - (h) A map showing the location of the project within the municipal jurisdiction it is located, and an indication if this project is located in any specially designated federal, state or local economic financing or taxation zone.
- (3) A statement, including supporting documentation, that the applicant is financially sound and has the financial resources to complete the project in a timely manner, assuming the grant is awarded.
 - (4) The potential for the project to promote economic development in the area.
 - (5) The impact the project will have on the environment.
 - (6) The amount and quality of the applicant's contribution to the project, including the amount and availability of capital investment and cash or in-kind service contributions.
 - (7) A list of other federal, state, local and private funding or financial sources the eligible applicant may be seeking funding from, including the timing of such funding awards.
 - (8) The innovativeness of the applicant's project proposal for remediation and redevelopment.
 - (9) An explanation of how the proposed project addresses the evaluation and eligibility criteria established in ss. Comm 110.03 and Comm 110.07.
 - (10) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including statements that:
 - (a) sufficient funding is not available at reasonable terms from any other source,
 - (b) that state funds received under this chapter will not replace funds from any other sources, such as Agri-Chemical, Petroleum Environmental Cleanup Fund Act, and Superfund,
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(10) A plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the project, pursuant to section Comm 110.06.

(11) Copies of phase 1 and phase 2 environmental assessments conducted in regard to the property.

Effective Date

Pursuant to Section 227.24, Stats., the emergency rule as ordered shall take effect on December 31, 1997 upon publication in the Official State Newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin this
19th day of December, 1997 by
the Department of Commerce.

By: 

William J. McCosher, Secretary

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Dennis W. Kozich, Chief Legal Counsel, Department of Commerce – 608/266-3203.

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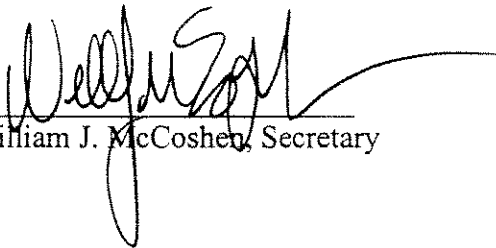
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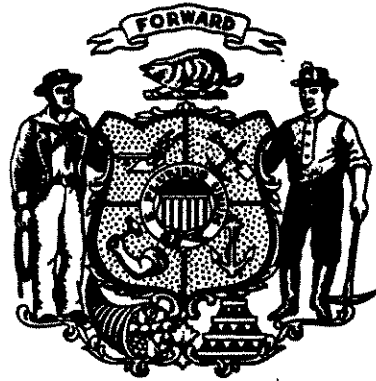
Effective Date

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Dated at Madison, Wisconsin this
19th day of December, 1997 by
the Department of Commerce.

By: 
William J. McCoshen, Secretary

END



END



201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
William J. McCoshen, Secretary

April 17, 1998

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 98-007

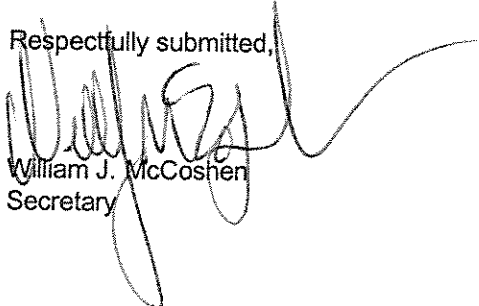
RULE NO.: Chapter Comm 110

RELATING TO: Brownfields Grant Program

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,


William J. McCoshen
Secretary



201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
William J. McCoshen, Secretary

April 17, 1998

Senator Fred Risser
President of the Senate
119 Martin L. King Blvd, Rm 102
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 98-007

RULE NO.: Chapter Comm 110

RELATING TO: Brownfields Grant Program

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


William J. McCoshen
Secretary



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 110

Relating to: Brownfields Grant Program

Clearinghouse Rule No.: 98-007

DEPARTMENT OF COMMERCE

RULE RELATING TO THE BROWNFIELDS GRANT PROGRAM

The Department of Commerce (Commerce) hereby proposes to adopt a to create Chapter Comm 110 Wisconsin Administrative Code, relating to the Brownfields Grant Program.

Analysis of Rules

Statutory Authority: Section 560.13, Stats.

Statutes Interpreted: Section 560.13, Stats.

On October 14, 1997, 1997 Wisconsin Act 27, took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the 97-99 biennium that can be distributed by Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires Commerce to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the Department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under Chapter 227, Stats., and exempts the Department from making a finding of an emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration and published and took effect on December 31, 1997. Commerce has decided to adopt the emergency rule as a permanent rule subject to public hearing review and comment pursuant to s. 227. 24(4), Stats.

Pursuant to s. 560.13, Stats., the Department of Commerce has authority to award grants for brownfields redevelopment or associated environmental remediation to any person, municipality or local development corporation. Chapter Comm 110, titled "Brownfields Grant Program", Wisconsin Administrative Code is being created to establish the criteria the Department will use to issue the grants. This chapter includes the same definitions contained in the Statutes necessary to implement the law. In addition, these rules delineate the criteria the Department will consider in the awarding of grants, including the content and information required from applicants, the conditions of contract under the grant, and reporting and auditing of implementing the grant in terms of periodic financial and program reports.

Contact Person

Dennis W. Kozich, Chief Legal Counsel, Department of Commerce – 608/266-3203.

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(1) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

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- (c) Surveying;
- (d) Conducting demolition activities;
- (e) Providing site security or site maintenance; and
- (f) Performing investigation activities.

(6) "Local development corporation" means a non-profit corporation organized under ch. 181, Stats., that does all of the following:

- (a) Operates within specific geographic boundaries.
- (b) Promotes economic development within the specific geographic area.
- (c) Demonstrates a commitment to or experience in the redevelopment of brownfields.
- (7) "Municipality" means a city, village, town or county.
- (8) "Person" means an individual, partnership, corporation or limited liability company.

(9)(a) "Phase 1 environmental assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.

(b) "Phase 2 environmental assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase 1 environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

(10) "Project" means any brownfields redevelopment or environmental remediation activities undertaken on a brownfield facility or site by or at the direction of an eligible recipient under s. 560.13 (2) (a), Stats.

(11) "Recipient match" means the contribution required under s. 560.13 (2) (b), Stats.

Comm 110.03 APPLICATION CONTENT. Applications from applicants shall be submitted to the department. Each application shall contain all of the following:

- (1) The name, address, and designated contact person of the applicant.
- (2) A description of the proposed project, including all of the following:
 - (a) The location and duration of the project.
 - (b) The brownfields redevelopment and environmental remediation activities that the applicant is seeking grant funds for.
 - (c) An itemized estimate of the proposed cost of each project activity.
 - (d) A description of the proposed match, and the professional qualifications of the persons conducting any in-kind services.
 - (e) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.
 - (f) The amount and availability of the expenditures required for local infrastructure relating to the project.
 - (g) The immediate and continuing effects of the project upon the political subdivisions within which it will be located.
 - (h) A map showing the location of the project within the municipal jurisdiction it is located, and an indication if this project is located in any specially designated federal, state or local economic financing or taxation zone.
- (3) A statement, including supporting documentation, that the applicant is financially sound and has the financial resources to complete the project in a timely manner, assuming the grant is awarded.
 - (4) The potential for the project to promote economic development in the area.
 - (5) The impact the project will have on the environment.
 - (6) The amount and quality of the applicant's contribution to the project, including the amount and availability of capital investment and cash or in-kind service contributions.

(7) A list of other federal, state, local and private funding or financial sources the applicant may be seeking funding from , including the timing of such funding awards.

(8) The innovativeness of the applicant's project proposal for remediation and redevelopment.

(9) An explanation of how the proposed project addresses the evaluation and eligibility criteria established in ss. Comm 110.05 and Comm 110.04.

(10) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including statements that:

(a) Sufficient funding is not available at reasonable terms from any other source;

(b) That state funds received under this chapter will not replace funds from any other sources, such as agri-chemical, petroleum environmental cleanup fund act, and superfund;

(c) That the project is not likely to take place without the grant; and

(d) That the proposed project will not displace any worker in the Wisconsin.

(11) A plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the project, pursuant to s. Comm 110.08.

(12) Copies of phase 1 and phase 2 environmental assessments conducted in regard to the property.

Comm 110.04 ELIGIBILITY. The department may award a grant to any person, municipality, or local development corporation if all of the following apply:

(1) The recipient will use the grant proceeds for brownfields redevelopment or associated environmental remediation activities.

(2) All of the following are unknown, cannot be located or are financially unable to pay the cost of brownfields redevelopment or associated environmental remediation activities:

(a) The party that caused the portion of the environmental contamination that is the basis for the grant request.

(b) Any person who possessed or controlled the environmental contaminant that is the basis for the grant request before the contaminant was released.

(3) The recipient will contribute a recipient match to the cost of the project in cash or in-kind.

Comm 110.05 CRITERIA FOR DETERMINING GRANT AWARDS. The department shall use the following criteria in determining grant awards:

(1) The potential of the project to promote economic development in the surrounding area including; job creation, wages and benefits, impact on economic distress, local and private investment, increase in taxable property, impact on the community, and other factors the department considers relevant.

(2) Whether the project will have a positive effect on the environment.

(3) The amount and quality of the recipient's contribution to the project.

(4) The innovativeness of the recipient's proposal for remediation and redevelopment including; proposed reuse, public or private partnership and other factors the department considers relevant.

Comm 110.06 CONTRACTS. Each grant recipient shall enter into a contract with the department for the purpose of implementing the grant awarded under this chapter. Each contract shall be signed by the secretary of commerce and the chief executive officer of the eligible recipient, or by the authorized representative of the eligible recipient. The department may void a contract and seek a return of any funds released under the contract for failure by the grant recipient to perform its obligations under the contract.

Comm 110.07 USE OF GRANT FUNDS. Grant proceeds may not be used for phase 1 and phase 2 environmental assessments.

Comm 110.08 REPORTING AND AUDITING. A grant recipient awarded a grant under this chapter shall provide the department semi-annual financial and program reports. A financial audit and final program reports shall be submitted at the end of each contract. The financial audit and the program reports become the property of the department and are open to public inspection.

(END)

Pursuant to s. 227.22 (2), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 110

Relating to: Brownfields Grant Program

Clearinghouse Rule No.: 98-007

DEPARTMENT OF COMMERCE

RULE RELATING TO THE BROWNFIELDS GRANT PROGRAM

The Department of Commerce (Commerce) hereby proposes to adopt a to create Chapter Comm 110 Wisconsin Administrative Code, relating to the Brownfields Grant Program.

Analysis of Rules

Statutory Authority: Section 560.13, Stats.

Statutes Interpreted: Section 560.13, Stats.

On October 14, 1997, 1997 Wisconsin Act 27, took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the 97-99 biennium that can be distributed by Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires Commerce to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the Department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under Chapter 227, Stats., and exempts the Department from making a finding of an emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration and published and took effect on December 31, 1997. Commerce has decided to adopt the emergency rule as a permanent rule subject to public hearing review and comment pursuant to s. 227.24(4), Stats.

Pursuant to s. 560.13, Stats., the Department of Commerce has authority to award grants for brownfields redevelopment or associated environmental remediation to any person, municipality or local development corporation. Chapter Comm 110, titled "Brownfields Grant Program", Wisconsin Administrative Code is being created to establish the criteria the Department will use to issue the grants. This chapter includes the same definitions contained in the Statutes necessary to implement the law. In addition, these rules delineate the criteria the Department will consider in the awarding of grants, including the content and information required from applicants, the conditions of contract under the grant, and reporting and auditing of implementing the grant in terms of periodic financial and program reports.

Contact Person

Dennis W. Kozich, Chief Legal Counsel, Department of Commerce – 608/266-3203.

ORDER

Pursuant to the authority vested in the Department of Commerce by Section 560.13, Stats., the Department of Commerce hereby creates Chapter Comm 110, Wisconsin Administrative Code, relating to the Brownfields Grant Program.

SECTION 1. Chapter Comm 110 Wisconsin Administrative Code is created to read:

Chapter COMM 110

BROWNFIELDS GRANT PROGRAM

Comm 110.01 PURPOSE. Pursuant to s. 560.13, Stats., the purpose of this chapter is to set forth the criteria for awarding grants for brownfields redevelopment or associated environmental remediation, including criteria for applying for and the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to the project and innovative proposals for remediation and redevelopment; contract requirements; use of grant funds; and reporting and auditing of the awarded grants.

Comm 110.02 DEFINITIONS. In this chapter:

- (1) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.
- (2) "Brownfields redevelopment" means any work or undertaking by a person, municipality or local development corporation to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate or rehabilitate the facility or existing buildings, structures or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial or other purposes. "Brownfields redevelopment" does not include construction of new facilities on the site for any purpose other than environmental remediation activities.
- (3) "Department" mean the department of commerce.
- (4) "Environmental remediation activities" means investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environmental pollution; abating, removing, or containing environmental pollution at a brownfields facility or site; or restoring soil or groundwater at a brownfields facility or site.
- (5) "In-kind contribution" means actual remediation services performed by a person qualified to provide such services under federal, state and local laws. These services may include, but are not limited to:
 - (a) Providing treatment services of contaminated groundwater;
 - (b) Excavating or hauling soil or other materials;
 - (c) Surveying;
 - (d) Conducting demolition activities;
 - (e) Providing site security or site maintenance; and
 - (f) Performing investigation activities.

(6) "Local development corporation" means a non-profit corporation organized under ch. 181, Stats., that does all of the following:

- (a) Operates within specific geographic boundaries.
- (b) Promotes economic development within the specific geographic area.
- (c) Demonstrates a commitment to or experience in the redevelopment of brownfields.
- (7) "Municipality" means a city, village, town or county.
- (8) "Person" means an individual, partnership, corporation or limited liability company.

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(8) The innovativeness of the applicant's project proposal for remediation and redevelopment.

(9) An explanation of how the proposed project addresses the evaluation and eligibility criteria established in ss. Comm 110.05 and Comm 110.04.

(10) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including statements that:

(a) Sufficient funding is not available at reasonable terms from any other source;

(b) That state funds received under this chapter will not replace funds from any other sources, such as agri-chemical, petroleum environmental cleanup fund act, and superfund;

(c) That the project is not likely to take place without the grant; and

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(4) The innovativeness of the recipient's proposal for remediation and redevelopment including; proposed reuse, public or private partnership and other factors the department considers relevant.

Comm 110.06 CONTRACTS. Each grant recipient shall enter into a contract with the department for the purpose of implementing the grant awarded under this chapter. Each contract shall be signed by the secretary of commerce and the chief executive officer of the eligible recipient, or by the authorized representative of the eligible recipient. The department may void a contract and seek a return of any funds released under the contract for failure by the grant recipient to perform its obligations under the contract.

Comm 110.07 USE OF GRANT FUNDS. Grant proceeds may not be used for phase 1 and phase 2 environmental assessments.

Comm 110.08 REPORTING AND AUDITING. A grant recipient awarded a grant under this chapter shall provide the department semi-annual financial and program reports. A financial audit and final program reports shall be submitted at the end of each contract. The financial audit and the program reports become the property of the department and are open to public inspection.

(END)

Pursuant to s. 227.22 (2), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 98-007

RULE NO.: Chapter Comm 110

RELATING TO: Brownfields Grant Program

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

No special skills are required. The rules require that any person, municipality or local development corporation who is awarded a grant enter into a contract and provide financial reports to the Department. These skills are the same skills small business must use to operate their business.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

No issues were raised during hearings by small business related to the ability or difficulty of small business being able to comply with the rules.

3. Nature and estimated cost of preparation of any reports by small businesses.

No estimates of costs were provided by small business to prepare any of the required reports.

4. Nature and estimated cost of other measures and investments required of small businesses.

No special investments are required of small business.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

No additional costs have been identified by the agency.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None.

RULE REPORT

Department of Commerce

Rule No.: Comm 110

Relating to: Brownfields Grant Program

Agency contact person for substantive questions:

Name Bruce Fox

Title Administrator

Telephone Number 267-3895

Agency contact person for internal processing:

Name Dennis Kozich

Title Chief Legal Counsel

Telephone Number 266-3203

1. Agency statutory authority under which the agency intends to promulgate the rule(s).

s. 560.13, Stats.

2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).

None

3. Citation of court decisions which are applicable to the proposed rule(s).

None.

4. Description of the proposed rule(s).

See analysis on hearing draft.

5. Reason for the proposed rule(s).

See analysis on hearing draft.

FISCAL ESTIMATE
DOA-2048 (R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Comm 110
Amendment No. if Applicable

Subject
Relating to Brownfields Grant Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.143 (1) (br), (qa), and (qm)

Assumptions Used in Arriving at Fiscal Estimate

1997 Wisconsin Act 27 created ss. 20.143 (1) (br) and (qm), Stats., appropriating \$5.0 million in each fiscal year of the biennium for brownfield redevelopment or associated environmental remediation grants. Section 20.143(1) (qa) appropriates \$225,200 in the first state fiscal year and \$266,700 in the second state fiscal year to fund a Brownfields Grant Ombudsman position and one position to process and issue the grants. In addition, the act created s. 560.13, Stats., which creates the Brownfields Grant Program in the Department of Commerce (Commerce).

Section 560.13, Stats., requires Commerce to adopt administrative rules that (1) set forth the criteria for processing and awarding grants or loans for brownfields redevelopment or associated environmental remediation, (2) prescribe the amounts of grants that may be awarded in accordance with statutory criteria, and (3) include criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment.

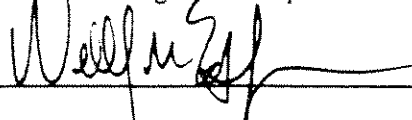
The act funds two positions for the biennium to administer the Brownfields Grant Program and develop information about the program that is accessible through the internet. These rules are estimated to have no additional fiscal impact beyond that which was appropriated.

Long-Range Fiscal Implications

Any annualized cost that would extended beyond the biennium would increase at the same inflationary costs as other programs.

Agency/Prepared by: (Name & Phone No.)
Commerce/Bruce Fox 266-3494

Authorized Signature/Telephone No.



Date

12/19/97

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect
DOA-2047(R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No. Adm. Rule No.
Comm 110

Amendment No.

Subject

Relating to Brownfields Grant Program

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category	\$	\$ -
State Operations - Salaries and Fringes		
(FTE Position Changes)	(+ 0 FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$0	\$ -
B. State Costs By Source of Funds	\$	\$ -
GPR		
FED		-
PRO/PRS		-
SEG/SEG-S	\$0	-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	\$	\$ -
GPR Taxes		
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S	\$0	-
TOTAL State Revenues	\$0	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$
NET CHANGE IN REVENUES	\$ 0	\$

Agency/Prepared by: (Name & Phone No.)

Commerce/Bruce Fox 266-3494

Authorized Signature/Telephone No.



Date

12/19/97

**DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD**

RULE NO.: Comm 110 DATE: February 12, 1998

RELATING TO: Brownfields Grant Program TIME: 1:00PM

LOCATION: 201 West Washington Avenue, Room 3B CITY: Madison

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
MIME PELW	WISCONSIN PROFESSIONAL SERVICES	BROOKFIELD, WI 53910	X		X
Tess O'Paine	Boadman Law Firm	Madison WI			X
Bruce Fox	Commerce	Madison			
Jacely Jugenheims	DOA/SBS	Madison			
Jacqui Jarvis	DNR	Madison			

**PUBLIC HEARING COMMENT AND AGENCY RESPONSE
DEPARTMENT OF COMMERCE**

Rule Number: Ch. Comm 110

Hearing Location: Madison

Relating To: Brownfields Grant Program

Hearing Date: February 12, 1998

DIVISION OF SAFETY AND BUILDINGS

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In	For Info.				
Sup.			Michael Palm MSA Professional Services, Inc 906 2 nd Street Baraboo, WI 5319	MSA supports the Brownfields Grant Program. Notes that the proposed rule excludes costs of phase 1 and phase 2 assessments and believes may cause a hardship on small to medium sized communities who are interested in investigating a potentially contaminated site, but lack the funds to conduct the proper environmental assessments. Indicates that the application content refers to providing an itemized estimate of the cost of each activity, but notes that it will be difficult to estimate the cost and anticipates it may result in overestimating the costs. Suggests a two-tiered approach: The first tier would cover phase 1 and 2 site investigation and remedial planning activities; the second tier would cover cleanup and redevelopment aspects.	Comment accepted. Comment noted. Believe many phase 1 and phase 2 assessments have already been completed for sites and these sites will be available to apply for the grants. Also, money is available to communities under the Community Development Block Grant Program that can be uses to perform assessments. Comment accepted. Since the program is a new program, it is difficult to assess to what extent this may or may not be a problem. Comment noted. Prefer to exclude a two-tier approach at this time for the reasons noted above.
X					

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 98-007

RULE NO.: Chapter Comm 110

RELATING TO: Brownfields Grant Program

Agency contact person for substantive questions.

Name: Dennis W. Kozich

Title: Chief Legal Counsel

Telephone No. 266-3203

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority (s.227.15(2)(a))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

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 98-007

AN ORDER to create chapter Comm 110, relating to the brownfields grant program.

Submitted by **DEPARTMENT OF COMMERCE**

01-15-98 RECEIVED BY LEGISLATIVE COUNCIL.

02-12-98 REPORT SENT TO AGENCY.

RS:MCP;jt;lah

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

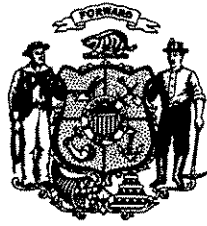
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-007

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.]

1. Statutory Authority

Section Comm 110.04 restricts the use of grant proceeds to certain "assessment services." This is substantially more restrictive than s. 560.13 (2) (a) 1., Stats., which authorizes the use of grant proceeds for "brownfields redevelopment or associated environmental remediation activities." Given the detail in s. Comm 110.08 regarding the activities to be described in a grant application, it appears that the intent of s. Comm 110.04 merely is to prohibit the use of grant proceeds for the completion of Phase 1 and Phase 2 environmental assessments. If that is the intent of the rule, s. Comm 110.04 should be redrafted. Also, it is unclear what is meant by "assessment services."

2. Form, Style and Placement in Administrative Code

- a. In the second paragraph of the analysis, the notation "Comm" should be inserted before the number "110."
- b. In s. Comm 110.02 (5), the first word in each paragraph should begin with a capital letter. [See, also, s. Comm 110.08 (10).]
- c. In s. Comm 110.02 (10), the first period should be deleted.
- d. "Department," as used in s. Comm 110.03 (1) and (4), should not be capitalized.
- e. The phrase "but not limited to" in s. Comm 110.03 (1) and (4) is unnecessary.

f. The lettered paragraphs in s. Comm 110.07 should be changed to numbered subsections.

g. It appears that the second sentence in s. Comm 110.08 (6) is intended to be a separate subsection.

h. The programs listed in s. Comm 110.08 (10) (b) should not be capitalized. Also, the phrase "Agri-Chemical" is not the correct name of the state program that the department intends to describe.

i. As a general comment, the sections of the rule are not in the proper order. It is good drafting practice in grant programs to draft the rule in the chronological order of the grant process. The following order is suggested for the rule:

- Application; s. Comm 110.08.
- Conditions for approval; ss. Comm 110.03 and 110.07.
- Contracts; s. Comm 110.05.
- Use of grant funds; s. Comm 110.04.
- Reports and audits; s. Comm 110.06.

4. Adequacy of References to Related Statutes, Rules and Forms

a. All statutory cross-references should use "s." rather than "section."

b. References at several places in the rule to "this subchapter" should be changed to "this chapter."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the analysis, it appears that the first sentence is incomplete.

b. Section Comm 110.01 describes the purposes for the new brownfields grant program rules. These purposes include "prescribing the amounts of grants that may be awarded." In fact, the rule does not prescribe the amounts of grants that may be awarded. Also, the word "their" should be replaced by the word "the."

c. The term "in-kind contribution" is defined as certain "actual remediation services." A list of examples follows and it is unclear why it is necessary to repeat "operating remediation services" in the list.

d. The definition of "project" refers to certain activities "undertaken on a site." Most other provisions of the rule refer to "facilities or sites" or "brownfields facilities or sites." It is not clear why "site" is used in this definition.

e. The title of s. Comm 110.03 is "GRANT PROCESS." The contents of that section relate to criteria for grant approval rather than a "grant process." Also, the introductory paragraph requires the department to consider the listed criteria "before awarding" a grant. If these criteria are conditions for approval of a grant, that should be explicitly stated. Many provisions within these criteria are unclear, including the following:

- What is "distress"?
- Does local and private investment relate only to the brownfields facility or site or to the surrounding area?
- Does the "increase in taxable property" relate to an increase in the value of taxable property?
- How does the "recipient's contribution to the project" relate to the requirement for a recipient match? Is this the same or different?
- Are "activities undertaken by or at the direction of the recipient" the same as in-kind contributions?
- What is meant by "public/private partnership"? Also, slashed alternatives should be avoided.

f. The phrase "successful applicant" in ss. Comm 110.05 and 110.06 should be replaced by a more conventional term, such as "grant recipient."

g. Section Comm 110.05 refers to a "proposed" grant. It appears that, at this stage in the process, the grant has been approved.

h. In the second sentence of s. Comm 110.06, the word "report" should be replaced by the word "reports."

i. Section Comm 110.07 uses the phrase "grant an award." The phrase "award a grant" would be consistent with the statute and the other portions of the rule.

j. In s. Comm 110.07 (a), the phrase "recipient uses" should be replaced by the phrase "recipient will use," since, at this point in the process, a grant has not been made. Similarly, par. (c) should be rewritten to state that the recipient will contribute a recipient match. The term "recipient match" should be used since it is a defined term.

k. Section Comm 110.08 (intro.) refers to "eligible applicants." However, this portion of the rule refers to the application process and the eligibility of the applicant has presumably not yet been determined.

l. It is not clear why the qualifications of a person in s. Comm 110.08 (2) (d) are related only to the provision of in-kind services. Should the rule impose requirements for qualifications on persons providing services financed with grant funds?

m. "Seking" is misspelled in s. Comm 110.08 (6).

n. In s. Comm 110.08 (10), if each paragraph does not end with a period, then each paragraph, except for the last paragraph, should make use of a semicolon.