

98-064 COMM 114 - MINORITY
BUSINESS FINANCE PROGRAM

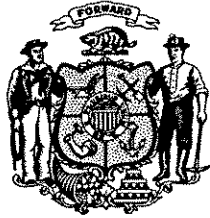
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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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 98-064

AN ORDER to amend Comm 114.01, 114.02 (1), (2), (6) and (9), 114.04 (2) and (3), 114.05 (5) and 114.06 to 114.09; to repeal and recreate Comm 114.02 (8) and (12), 114.03 (3), 114.04 (1) and 114.05 (title) and (1) to (3); and to create Comm 114.02 (2m), (5m), (7m) and (13m), 114.03 (1m) and (2m), 114.045, 114.05 (4m) and 114.055., relating to the minority business finance program.

Submitted by **DEPARTMENT OF COMMERCE**

04-29-98 RECEIVED BY LEGISLATIVE COUNCIL.

05-28-98 REPORT SENT TO AGENCY.

RNS:DF:kjf;jt

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)]

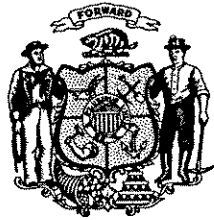
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-064

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. The introductory clause to the rule does not follow the format set forth in s. 1.02 (1), Manual. An introductory clause should enumerate each rule provision treated and the nature of the treatment.

b. In SECTIONS 2 to 15 and SECTIONS 18 and 19, following the treatment clause for each SECTION, the rule section number should be set forth immediately preceding the text of the affected rule. [See s. 1.04 (2), Manual.] For example, in SECTION 2, "Comm 114.02" should be inserted before "(1)." In the other SECTIONS, "Comm" should be inserted before the section number.

c. In SECTION 8, "The" should be stricken and replaced by "the."

d. In SECTION 19, in the first sentence, the first "any" should be stricken.

e. In s. Comm 114.055 (2), ", (f) to (i), (j) and (k)" can be replaced by "and (f) to (k)."

f. The rule should include an effective date clause. [See s. 1.02 (4), Manual.]

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

a. In SECTION 8, a comma should be inserted after "such financing."

b. Section Comm 114.08 could be simplified by substituting "solicit" for "be responsible for soliciting" and deleting the "ing" on the other verbs. Also, "be required to" can be stricken in ss. Comm 114.06 and 114.07.

c. Several provisions of the rule refer to an application manual. Will the manual contain forms? Where may a manual be obtained? [See s. 1.09 (2), Manual.] 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.]

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 114, Wis. Adm. Code, relating to the minority business finance program.

Analysis

Statutory Authority: Sections 560.038 and 560.039, Stats., creates the Minority Business Incubator programs. Subchapter VII, Ch. 560 creates the Minority Business Finance programs. Sections 560.02 and 560.85 (1) authorizes the Department to promulgate rules required to administer the programs.

The proposed rule creates rules for the new business incubator programs, the new development finance and education and training grants program, and a new revolving loan fund program. These changes are a result of statutory changes made in 1997 Wis. Act 27, the biennial budget bill. The proposed rule also makes some technical changes to simplify the rules for the programs and to make the rules for each program as uniform as possible.

The significant changes in the proposed rules include:

1. Two programs are created for business incubators. The Department may award up to \$300,000 per year to fund minority business incubators. The incubators must provide services primarily to minority group members or minority businesses. The incubators must meet at least two of the following criteria:

A. Space in the facility is rented at a rate lower than the market rate in the community.

B. Shared business services are provided in the facility.

C. Management and technical assistance are available at the facility.

D. Businesses using the facility may obtain financial capital through a direct relationship with at least one financial institution.

2. The Minority Business Finance Board (Board) may award grants of up to \$200,000 in a fiscal year to a local development corporation to create, expand or continue a revolving loan fund that will benefit minority businesses, or to provide loans of up to \$50,000 to minority businesses for a project.

3. The Board may award grants to a nonprofit organization or private financial institution to make loans for up to \$5,000 for working capital for minority group members

Same

cs 560.038

1)(a)

560.039

(1)(c)

560.83(4)(b)

560.83(2)(a)

560.837(1)(b)

and businesses, or to pay origination fees or other administrative costs associated with making loans for working capital. The Board may also award grants to a nonprofit organization that is a minority business and that will provide education and training to minority members and businesses that receive working capital loans, as mentioned above, of up to \$5,000.

4. The definition of a development project has been expanded to include the promotion of economic development and employment opportunities for minority groups members or minority businesses.

5. 560.8017(b) 2 & 3

Agency Procedure for Promulgation

A public hearing is required.

Contact Person

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Pursuant to the authority vested in the Department of Commerce by ss. 560.02 (4), 560.85, and 227.11 (2), Stats., the Department of Commerce hereby creates rules interpreting ss. 560.038, 560.039 and Subch. VII, Ch. 560, Stats., as follows:

*INTHE CLAUSE
WRONG format
(see s. 1.02(1) & sample)*

SECTION 1. Comm 114.01 is amended to read:

114.01 PURPOSE. The purpose of this chapter is to establish a procedure for the administration of minority business early planning and development projects, finance projects, education and training projects, and revolving fund projects by the department as provided by subch. VII, ch. 560, Stats.

SECTION 2. Comm 114.02 (1) and (2) are amended to read:

Comm 114.02 (1) "Application" means a proposal from an eligible recipient or local development corporation which contains all the elements required in s. Comm 114.04 ~~or~~ 114.045, 114.05, or 114.055.

(2) "Board" means the minority business development board as defined in s. 15.155 (3), Stats.

SECTION 3. Comm 114.02 (2m) is created to read:

Comm 114.02 (2m) "Business incubator" has the meaning given in s. 560.038 (1) (a), Stats.

SECTION 4. Comm 114.02 (5m) is created to read:

Comm 114.02 (5m) "Education and training project" has the meaning given in s. 560.80 (3m), Stats.

SECTION 5. Comm 114.02 (6) is amended to read:

Comm 114.02 (6) "Eligible development project costs" means the costs of working capital, machinery and equipment, land and building acquisition, existing business acquisition and related expenses that, in accordance with good business and financial practices, are appropriately incurred in connection with a development project. "Eligible development project costs" does not include entertainment expenses or expenses incurred before the board approves a grant or loan under s.560.83 or 560.835.

SECTION 6. Comm 114.02 (7m) is created to read:

(7m) "Finance project" has the meaning given in s. 560.80 (5m), Stats.

SECTION 7. Comm 114.02 (8) is repealed and recreated to read:

(8) "Financial audit" means an audit performed to the requirements and satisfaction of the department.

SECTION 8. Comm 114.02 (9) is amended to read:

(9) "Financing is unavailable from any other source on reasonably equivalent terms" means either of the following:

~~(a) Financing has been declined for the development or early planning project.~~

~~(b) The ^{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 schedule offered on such financing are materially different from the financing available from the Wisconsin minority business finance program.~~

SECTION 9. Comm 114.02 (12) is repealed and recreated to read:

Comm 114.02(12) "Minority business" means a minority business, as defined in s. 560.036 (1) (e), that has its principal place of business in this state.

SECTION 10. Comm 114.02 (13m) is created to read:

Comm 114.02(13m) "Nonprofit corporation" has the meaning given in s. 560.038 (1) (b), Stats.

SECTION 11. Comm 114.03 (1m) is created to read:

Comm 114.03(1m) The department shall award business incubator grants in accordance with the provisions of this chapter.

SECTION 12. Comm 114.03 (2m) is created to read:

Comm 114.03(2m) The board shall award finance and education and training grants in accordance with the provisions of this chapter.

SECTION 13. Comm 114.03 (3) is repealed and recreated to read:

Comm 114.03 (3) The department shall enter into a contract with each recipient of an award under this chapter.

SECTION 14. Comm 114.04 (1) is repealed and recreated to read:

Comm 114.04 (1) Eligible applicants shall submit an application for funding that addresses all the instructions and items in an application manual provided by the department.

SECTION 15. Comm 114.04 (2) and (3) are amended to read:

Comm 114.04(2) The department may not award a grant under this section unless, after considering the application and any other information it deems relevant, the department determines that the proposed early planning project meets the requirements of s. 560.84 (1) (a), (b) 1., (c), (d), (e) 1., (f), (g), (h) and (i), Stats.

(3) The department shall consider pars. (a) to (f) before awarding an early planning grant ~~from the appropriation under s. 20.143 (1) (fm), Stats.~~

SECTION 16. Comm 114.045 is created to read:

114.045 BUSINESS INCUBATOR GRANTS. (1) Eligible applicants shall submit an application for funding that addresses all the instructions and items in an application manual provided by the department.

(2) The department may not award more than \$100,000 in any fiscal year for incubator projects under s. 560.038, Stats. and not more than \$100,000 in any fiscal year for incubator projects under s.560.039, Stats.

(3) (a) The department may make a grant under sub. (2) only if the applicant agrees to operate the incubator for at least 5 years following receipt of the grant. Should the incubator cease operations during the 5th year period, the department may require repayment as follows:

1. If the incubator ceases operations during the first year, the department may require repayment of up to 100% of the grant funds received.

2. If the incubator ceases operations during the second year, the department may require repayment of up to 80% of the grant funds received.

3. If the incubator ceases operations during the third year, the department may require repayment of up to 60% of the grant funds received.

4. If the incubator ceases operations during the fourth year, the department may require repayment of up to 40% of the grant funds received.

5. If the incubator ceases operations during the fifth year, the department may require repayment of up to 20% of the grant funds received.

(b) If the incubator is sold during the 5 years following receipt of a grant, the applicant shall pay to the department the lesser of that part of the sale price which exceeds the original acquisition cost or the grant amount.

SECTION 17. Comm 114.05 (title), (1) (2) and (3) are repealed and recreated to read:

114.05 DEVELOPMENT PROJECT AND REVOLVING LOAN FUND GRANTS AND LOANS. (1) Eligible applicants shall submit an application for funding that addresses all the instructions and items in an application manual provided by the department.

(2) The board shall make the determinations required under s. 560.84 (1) (a), (b) 2., (c), (d), (e) 2. and 3., and (f) to (j), Stats., before funding a project.

(3) The board shall consider the criteria under s. 560.84 (2) (a) 2. to (f), Stats., before funding a project.

SECTION 18. Comm 114.05 (4m) is created to read:

Comm 114.05 (4m) The board may award a grant or loan under this section to a local development corporation for a revolving loan fund project which meets all of the requirements of this section and which will benefit minority businesses or minority group members who are residents of this state.

SECTION 19. Comm 114.05 (5) is amended to read:

Comm 114.05 (5) Awards by the board to ~~any local development corporation~~, to any eligible recipient ~~or~~ for any development project may total no more than \$100,000 in a fiscal biennium. Awards by the board to any local development corporation for development projects or revolving loan fund projects may total no more than \$200,000 in a fiscal year.

SECTION 20. Comm 114.055 is created to read:

114.055 DEVELOPMENT FINANCE AND EDUCATION AND TRAINING

GRANTS. (1) Eligible applicants shall submit an application for funding that addresses all the instructions and items in an application manual provided by the department.

X (2) The board shall make the determinations required under s. 560.84 (1) (a), (c), (d), (f) ~~to (i), (j) and (k)~~, Stats., before funding a project.

(3) The board shall consider the criteria under s. 560.84 (2) (b), (d), and (e), Stats., before funding a project.

SECTION 21. Comm 114.06 to 114.09 are amended to read:

114.06 CONTRACTS. Each successful applicant shall ~~be required to~~ enter into a contract with the department for the purposes of implementing the proposed grant or loan. The contract shall be signed by the secretary of the department and by the ~~chief executive officer of the successful applicant, or by their authorized representatives~~ person or persons authorized by the applicant to enter into the 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. ~~Any relocation from Wisconsin to any other state of the jobs created or retained through the project shall void the contract, and all funds paid to date shall be refunded to the department for use in support of other applications submitted under this chapter. These restrictions apply only to jobs described in the project application provided in s. Comm 114.04 or 114.05, and apply only for a term subject to negotiation between the successful applicant and the department.~~

114.07 REPORTING AND AUDITING. Each successful applicant shall be required to provide the department periodic financial reimbursement documentation and program reports on the project. A financial audit and final program report shall be submitted at the end of each ~~development project contract for projects of \$25,000 or more.~~ The financial audit shall be performed to the satisfaction of the department. The cost of the audit may be covered by the project grant or loan. The ~~financial reports~~ reimbursement documentation, audit and program reports shall be submitted to the department by a date specified in the contract. The reimbursement documentation, financial audit and the program reports become the property of the department and are open to public inspection.

X **114.08 ADMINISTRATION.** The department shall be responsible for soliciting applications, reviewing applications, awarding early planning and business incubator project grants, making recommendations to the board on the disposition of development project, revolving fund, and finance or education and training project 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 114.07, and for collecting any repayments of ~~grants and~~ loans from successful applicants.

Single Review too long

114.09 BOARD OPERATIONS. The board shall consider the recommendations of the department relating to development project, revolving fund, and finance or education and training project grants and loans. The board shall approve an application before the department may enter into a contract for a ~~development~~ project grant or loan. The department shall maintain records of the board proceedings and provide ~~other~~ staff support as may be necessary to the board.

off. date