

SECTION 1. Comm 132.40 Note is created to read:

Comm 132.40 Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants, loans or tax credits; (2) submittal of statements for such grants and loans; and (3) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

[Note to Legislative Reference Bureau: Insert an identically worded Note at the end of each of the following sections: Comm 106.49, 106.68, 106.87, 108.02, 110.08, 111.09, 113.07, 116.07, 117.07, 127.06, 129.03, 131.50 and 133.10.]

SECTION 2. Chapter Comm 149 is created to read:

Chapter Comm 149

STATEMENTS AND PENALTIES FOR GRANT AND LOAN PROGRAMS, AND PENALTIES FOR TAX CREDIT PROGRAMS

Comm 149.10 Purpose, scope and authority. (1) The purpose and scope of this chapter is to implement the provisions of s. 560.01 (2) (ae), Stats., that relate to statements and penalties for each of the economic-development grant or loan programs administered by the department, and penalties for each of the economic-development tax credit programs administered by the department.

Note: The Department and other state agencies have additional administrative rules that address economic development programs, including chapters Comm 100, Tax Benefits for Job Creation, Capital Investment, Employee Training, and Corporate Headquarters; Comm 106, Wisconsin Development Fund; Comm 108, Community Development Block Grant Program; Comm 110, Brownfields Grant Program; Comm 111, Certified Capital Companies; Comm 113, Allocation of Volume Cap on Tax-Exempt Private Activity Bonds; Comm 116, Rural Economic Development Program; Comm 117, Business Development Initiative Program; Comm 127, Main Street Program; Comm 129, Technology Commercialization Programs; Comm 131, Diesel Truck Idling Reduction Grants; Comm 132, Dairy Manufacturing Facility Investment Credit; and Comm 133, Film Production Accreditation Program.

The Department also administers other economic development programs directly under applicable provisions of chapter 560 of the Statutes or federal specifications, rather than in combination with administrative rules, including the Early Planning Grant Program, the Entrepreneurial Training Grant Program, the Business Employees' Skills Training Program, the Gaming Economic Diversification Grant And Loan Program, and the Wisconsin Trade Project Program.

(2) This chapter is promulgated under the authority of s. 560.01 (2) (ae) 6. and 7., Stats.

Comm 149.20 Definitions. In this chapter:

(1) "Contract" includes a written agreement that establishes responsibilities which a recipient will fulfill with regard to the department's terms and conditions of an award.

(2) "Department" means the department of commerce.

(3) "Economic development program" has the meaning given in s. 560.001 (1m), Stats.

Note: Section 560.001 (1m) of the Statutes reads as follows: “ ‘Economic development program’ means a program or activity having the primary purpose of encouraging the establishment and growth of business in this state, including the creation and retention of jobs, and that satisfies all of the following:

(a) The program receives funding from the state or federal government that is allocated through an appropriation under ch. 20.

(b) The program provides financial assistance, tax benefits, or direct services to specific industries, businesses, local governments, or organizations.”

(4) “Recipient” means the direct beneficiary of a grant or loan or tax credit that is issued or authorized by the department under an economic development program.

Comm 149.30 Contracts. The recipient’s authorized director or principal officer shall enter into a contract with the department on behalf of the recipient, for each grant, loan or tax credit, prior to receiving allocation of the grant, loan or tax credit.

Comm 149.40 Statements for grants and loans. (1) For each grant or loan, the recipient’s authorized director or principal officer shall sign and submit to the department a statement on behalf of the recipient, that contains all of the following:

(a) Itemized description and accounting of the department’s funding, including the dollar amount and what the funds were used for.

(b) Itemized description and accounting of the match funding as defined in the recipient’s contract with the department, including the dollar amount and what the funds were used for.

(c) Detailed description of all deliverables as specified in the recipient’s contract with the department and the date on which these deliverables were met.

(2) The signature in sub. (1) shall attest to the accuracy, completeness and validation of all of the submitted information.

(3) Each statement submitted under sub. (1) for a grant or loan that totals \$100,000 or more shall also be signed by an independent certified public accountant licensed or certified under ch. 442, Stats., attesting to the accuracy of the information specified in sub. (1) (a).

(4) The statement required in this section shall be prepared and submitted in accordance with the format and timeline specified in the recipient’s contract with the department.

Comm 149.50 Penalties for grants, loans and tax credits. (1) The department may impose any of the following penalties on a recipient who submits false or misleading information or who fails to comply with the terms of a contract and fails to explain the noncompliance to the satisfaction of the department:

(a) The department may recoup payments made to the recipient.

(b) The department may withhold payments to be made to the recipient.

(c) The department may impose a forfeiture on the recipient. This forfeiture may take the form of cash penalties, an increase in the loan interest rate, debarment from accessing Commerce programs, or other forfeitures as specified in the contract.

Note: Section 560.075 (2) of the Statutes requires a recipient of a grant, loan or tax credit to enter into an agreement with the Department to repay the grant, loan or tax credit if, within 5 years after either receiving the grant or loan or being certified to receive the tax credit, the recipient (1) ceases to conduct in Wisconsin the economic activity for which the recipient either received the grant or loan or was certified to receive the tax credit, and (2) then commences substantially the same economic activity outside Wisconsin.

(2) (a) Any penalties imposed under sub. (1) shall be in accordance with the procedures and amounts and any other relevant terms prescribed in the recipient's contract with the department.

(b) Any fine or other penalty that is imposed under this chapter may not be paid for with funds obtained through a grant, loan or tax credit program administered by the department.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

File reference: Comm 149/rules 2009LR2