

Clearinghouse Rule 10-120

**DATCP Docket No.
Rules Clearinghouse No. 09-R-4**

**Proposed Hearing Draft
October 13, 2010**

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

2 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
3 following order *to create* Subchapter V of Chapter ATCP 161, *relating to verified* statements
4 and contract penalties for grant and loan programs.

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

This rule implements s. 93.07(18)(b)6. and 7., Stats. (created by 2007 Wisconsin Act 125) which require new accountability measures related to state economic development grants and loans. Under s. 93.07(18)(b)6. and 7., Stats., the department of agriculture, trade and consumer protection (DATCP) must adopt rules to do all of the following (other agencies that make economic development grants and loans must adopt similar rules):

- Require persons receiving more than \$100,000 in economic development grants or loans to submit verified statements to DATCP, and make supporting documentation available for DATCP inspection.
- Establish procedures that will allow DATCP to withhold payments to, recover funds from, or impose financial penalties on grant or loan recipients who submit false information to DATCP or fail to honor the terms of a grant or loan contract. The new procedures must include contract provisions that will allow DATCP to impose penalties on grant or loan recipients who fail to honor contract obligations.

Statutes Interpreted

Statutes Interpreted: s. 93.07 (18)(b)6. and 7., Stats.

Statutory Authority

Statutory Authority: Sections 93.07(1) and 93.07(18)(b)6. and 7., Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. Sections 93.07(18)(b)6. and 7., Stats., require DATCP to adopt certain rules imposing accountability measures related to state economic development grants and loans. This rule implements that statutory mandate.

Related Rules or Statutes

2007 Act 125 also requires the departments of commerce, natural resources, tourism and transportation, the UW system, the Wisconsin technical college system, and the Wisconsin housing and economic development authority to adopt rules that are similar to this rule. DATCP also has existing contract rules for agricultural diversification and development grants (ATCP 161.07) and “buy local” grants (ATCP 161.46).

Plain Language Analysis

This rule requires the following accountability provisions in each contract for a DATCP economic development grant or loan:

- For a grant or loan of \$100,000 or more, a provision requiring the grant or loan recipient to give DATCP a verified statement signed by a certified public accountant (CPA) and a director or principal officer of the grant or loan recipient.
- Provisions allowing DATCP to withhold payments to, recover funds from, or impose financial penalties on grant or loan recipients who submit false information to DATCP or fail to honor the terms of the grant or loan contract.

Fiscal Impact

DATCP currently requires each recipient of an economic development grant or loan to enter into a contract that contains provisions similar to those required by ss. 93.07(18)(b)6. and 7., Stats. This rule may require slight changes to future contract provisions, but will not increase DATCP administrative costs. This rule will have no fiscal impact on local units of government. A complete *fiscal estimate* is attached.

Business Impact

This rule will affect businesses that receive economic development grants and loans from DATCP. Many of those businesses are “small businesses.” This rule may impose some additional costs on grant and loan recipients, but the costs are likely to be negligible (most costs apply only to businesses that violate their grant or loan contracts). Affected businesses voluntarily apply for the grants and loans, and receive a substantial overall financial benefit. The contract provisions contained in this rule are required by law, and are merely designed to ensure accountability in the use of state funds. A complete *business impact analysis* is attached.

Federal and Surrounding State Programs

Federal Programs

- Federal statutes under 31 USC 6304 require contracts for many federal grants.
- Many federal grant programs have regulations to ensure grant accountability, including regulations related to grant contracts, contract performance, financial accountability, and remedies for noncompliance.
- Administering agencies may deny, suspend or terminate payments to grant recipients who fail to comply with grant contract terms.
- If a grant recipient makes false or misleading statements to obtain a grant or benefit, the agency may collect civil forfeitures and assessments that are well in excess of the fraudulently-obtained grant or benefit payments.

Surrounding States

Minnesota

Minnesota requires recipients of state economic development grants to enter into grant contracts. Recipients may be required to report on the use of funds, and may be required to repay grant funds if they fail to comply with contract terms. Minnesota, like Wisconsin, requires more detailed reports from persons receiving large grants.

Michigan

Michigan requires certain persons receiving economic development grants (including tax credits for job promotion) to enter into grant contracts, submit verified statements, and report on fund use and benefits. Funding can be reduced or terminated, and recipients can be required to repay funds, for certain reasons.

Illinois

Illinois requires recipients of state economic development grants to enter into grant contracts. Recipients may be required to report on the use of funds, and may be required to repay grant funds if they fail to comply with contract terms. Minnesota, like Illinois, requires more detailed reports from persons receiving large grants.

Iowa

Iowa requires recipients of state economic development grants to enter into grant contracts. Recipients may be required to report on the use of funds, and may be required to repay grant funds if they fail to comply with contract terms.

Data and Analytical Methodologies

This rule does not rely on any special data or analytical methodologies. Rule standards and requirements are largely dictated by state law, but also implement practices developed by

DATCP under its existing grant and loan programs. These practices are similar to practices used by the federal government, other states and the private sector.

DATCP Contact

Questions and comments related to this rule may be directed to:

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1 **SECTION 1.** Subchapter V of Chapter ATCP 161 is created to read:

2 **SUBCHAPTER V**
3 **ACCOUNTABILITY REQUIREMENTS**

4 **NOTE:** This subchapter implements ss. 93.07(18)(b)6. and 7., Stats.

5 **ATCP 161.50 Definitions.** In this subchapter:

6 (1) “Department” means the Wisconsin department of agriculture, trade and consumer
7 protection.

8 (2) “Economic development grant or loan” means a grant or loan awarded by the
9 department pursuant to an economic development program

10 (3) “Economic development program” has the meaning given in s. 93.07(18)(a), Stats.,
11 and includes all of the following programs administered by the department:

12 (a) The agricultural diversification and development grant program under ss.
13 20.115(4)(c) and 93.46, Stats.

14 **NOTE:** See also subchapter I of this chapter.

15 (b) The “buy local” grant program under ss. 20.115(4)(am) and 93.48, Stats.

16 **NOTE:** See also subchapter IV of this chapter.

17 (c) The rural development loan program under ss. 20.115(3)(h) and 93.07(1qm), Stats.

1 **NOTE:** Paragraph (c) includes federally-funded revolving loan programs for value-
2 added agricultural enterprises.
3

4 (d) Agricultural development grant and loan programs for which the department is
5 authorized to accept federal funds under ss. 20.115(3)(m) and 16.54, Stats.

6 **NOTE:** Paragraph (d) includes the federally-funded value-added dairy initiative.

7 (e) The grazing lands conservation grant program under ss. 20.115(4)(s) and 93.60,
8 Stats.

9 **(4)** “Recipient” means a person who receives an economic development grant or loan.

10 **(5)** “Verified statement” means a written statement, signed by an independent certified
11 public accountant licensed or certified under ch. 442 and by the director or principal officer of
12 the recipient, in which the signers attest to the accuracy of the statement

13 **ATCP 161.52 Grant or loan contract; general.** The department may not release any
14 economic development grant or loan funds, except pursuant to a contract with the recipient. The
15 contract shall do all of the following:

16 **(1)** Clearly identify the recipient, and the amount of the grant or loan.

17 **(2)** Set forth the terms and conditions of the grant or loan, including all of the following
18 as appropriate:

19 (a) Actions required of the recipient, including contemplated uses of the grant or loan
20 funds.

21 (b) Matching funds, if any, required of the recipient.

22 (c) Expected deliverables.

23 (d) Repayment requirements, if any.

24 (d) Documentation, reports and accounting required of the recipient.

1 (e) Penalties or remedies that the department may seek in the event of a contract breach.
2 The specification of penalties or remedies under this paragraph does not prevent the department
3 from pursuing any other remedy to which the department may otherwise be entitled by law.

4 **ATCP 161.54 Large grants or loans; contract requirements.** For each grant or loan
5 of \$100,000 or more, the contract under s. 161.52 shall require the recipient to do all of the
6 following:

7 (1) Submit a verified statement accounting for the use of all grant or loan funds received.

8 The verified statement shall include all of the following:

9 (a) The amount of funds received.

10 (b) A clear itemized description showing, by expenditure category, how all received
11 funds were spent.

12 (c) The nature and amount of any matching funds provided by the recipient, and the
13 recipient's use of those matching funds.

14 (d) Documentation of the deliverables provided by the recipient under the contract, and
15 the dates on which the recipient provided those deliverables.

16 (2) Submit the verified statement under sub. (1) in a form required by the department,
17 within a time period specified by the department.

18 (3) Make available to the department, upon request, evidence documenting the accuracy
19 of the verified statement under sub. (1).

20 **ATCP 161.56 Penalties and remedies for false statement or contract breach.** (1) In
21 addition to any other penalties or remedies provided by law, a contract under s. 161.52 may
22 provide for any of the following penalties or remedies if the grant or loan recipient submits false
23 or misleading information to the department, or fails without reasonable justification to comply
24 with the terms of the contract:

1 (a) The department may demand and recover payments made under the contract.

2 (b) The department may withhold payments to which the recipient would otherwise be
3 entitled under the contract.

4 (c) The department may demand and recover a forfeiture or other penalty specified in the
5 contract. A recipient may not pay any forfeiture or penalty under this paragraph with funds
6 received under another grant or loan from the department.

7 (d) The department may disqualify the recipient from eligibility for future economic
8 development grants or loans from the department.

9 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
10 following publication in the Wisconsin administrative register, as provided in s.
11 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Randy Romanski, Secretary