Report From Agency

Department of Administration
Report to Legislature
Clearinghouse Rule 13-069

Proposed Rule and Summary:

The proposed rule, including analysis and text, are attached.

Reference to applicable forms:

There are no references to new forms

Fiscal estimate and Economic Impact Statement:

The fiscal estimate and economic impact analysis are attached. The proposed rule will have no impact upon the State's fiscal obligations. The proposed rule will have a positive impact on the economy of the state by ensuring continued eligibility of the State of Wisconsin to receive additional CDBG grant funds which are used to promote economic development throughout the State. The fiscal estimate was updated to reflect that the Department did not receive any comments.

Basis and Purpose of the Proposed Rule:

The objective of the rule is to set forth the criteria the department will use to administer the CDBG program.

Department Response to Legislative Council Rules Clearinghouse Recommendations:

A copy of the Rules Clearinghouse Report is attached. The Department accepts the recommendation(s) made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested except as follows:

Clearinghouse Comment 2 (summary):

a. The summary of the proposed rule provided in the analysis should be expanded.

b. Create a Subchapter I with title, and add a title to Subchapter IV.

c. Omit quotation marks in Notes throughout the chapter.

d. In s. Adm 93.03 (17), insert the phrase "community development" after the word "federal."

e. In s. Adm 93.03 (19), change "the HUD" to "HUD".

f. Poses a series of questions regarding whether clarifications should be made to the rule.

Department Response to Clearinghouse Comment 2:

a. The summary has been expanded, however, expansion to include all language from the prior Commerce administrative rule would not be practical.

b. Additions made as called for by comment.

c. Quotation marks omitted as called for by comment, but the department notes that the quotation marks, as used in its draft, were present in the commerce administrative rule.

d. Phrase added as called for by comment, but the department notes that the definition as used in its draft was identical in content to the commerce administrative rule.

e. Adjustment made to s. Adm 93.03 (18) in response to the comment; comment incorrectly referenced s. Adm 93.03 (19).

f. Some adjustments made in response to comment. Cross-references in comment examined and found not to create a conflict. The Department declines to include a sample calculation in the administrative code; illustrations and examples are better suited for a user's manual than for a statute or rule of general application.

Clearinghouse Comment 4:

a. The reference, in s. Adm 93.08, to both s. Adm 93.04 and 24 CFR 570 is redundant.

b. In s. Adm 93.19 (1) (m), the citation to s. Adm 93.04 (3) is incorrect because s. Adm 93.04 does not have subsections.

Department Response to Clearinghouse Comment 4:

a. The department recognizes the redundancy, but respectfully declines to eliminate the redundancy because both references are legally valid. The department further notes the language used its draft was identical in content to the commerce administrative rule.

b. The reference has been corrected.

Clearinghouse Comment 5 (summary):

a. Section Adm 93.05 should require the department to create the application instruction manual referred to in s. Adm 93.07. In addition, the rule should provide guidelines for the department to follow in establishing elements (of items in manual). In addition, if local financial participation is required for any program… that requirement should be set forth in the rule.

b. The rule should provide guidelines that the department must follow in establishing the distribution amounts referred to in s. Adm 93.06 (1).

c. Should the rule define "public facilities project" as used in s. Adm 93.09 (1) (a)?

d. It appears that s. Adm 93.09 (1) (b) should be expanded to provide more detailed information regarding the level of local financial participation that is required and the circumstances under which the department may waive that requirement.

e. Section 93.14 should describe the purpose of economic development grants… the department should provide more detail on how the department will consider the factors listed… and what is meant by "other economic factors."

f. Section Adm 93.15 should specify with whom a person… must execute an agreement, and consequences to be imposed if the agreement is breached.

g. Section Adm 93.16 should explain how a local government might acquire "program income" from awarding grants. Should "grants" be changed to "loans"?

h. Section Adm 93.17 should provide more guidance regarding how various factors listed will be considered when the department awards… grants. (This section and) s. 93.19 (1) should… be reviewed to determine whether there are circumstances under which any of the factors cited in that subsection are not necessary elements… .

Department Response to Clearinghouse Comment 5:

a. Again, the department wishes to note that the language used in its draft was identical in content to the commerce administrative rule. In response to the comment the department has expanded the rule to include a specific reference to the application instruction manual, as well as three specific cross-references to other sections as suggested by the comment. The department respectfully declines to make additional alterations to the previous rule as such alterations may leave the department unable to accept federal funds in the event of unanticipated changes to HUD regulations or HUD interpretations of said regulations.

b. In response to the comment, the department has expanded the rule to explain that distribution amounts must be established in accordance with HUD regulations.

c. As of this writing, HUD has yet to issue a definition for the phrase in question. The department respectfully declines to create such a definition as doing so could create a conflict with any potential future HUD definition, and on the assumption that if HUD does not deem it necessary to define the phrase then the answer to the question posed in the comment should be "no".

d. The department respectfully declines to alter the draft rule in response to the comment. Although it might "appear" to the clearinghouse that an expansion is warranted, the department believes that the draft rule adequately addresses the elements of the comment while maintaining the ability of the department to meet the needs of the public in a variety of situations (e.g. "immediate threats to the safety, health or welfare of the community") are difficult to predict in the abstract.

e. The department respectfully declines to alter the draft rule in response to the comment. The purpose of economic development grants is as set forth by federal law. Awards are made in accordance with economic and population data as determined by HUD.

f. The department has added a more explicit reference to whom the parties to the contract must be. The department declines to prescribe by rule what the consequences will be in a given situation should a contracting party fail to fully meet all obligations as set forth in the agreement. Doing so could create unintended and unjust consequences in any given situation, resulting in the loss of employment for workers employed by the affected company.

g. The department respectfully declines to alter the draft rule in response to the comment. The use of the term "grant" in this context is correct as it refers to the local government, which does receive a grant from HUD via the state. The department proposes to add a definition of "program income" in a new sub-section Adm 93.03 (21m) in response to the remainder of the comment.

h. The department wishes to note that the language found in the draft is substantially the same as the previous commerce rule. The department respectfully declines to expand the rules as suggested in the comment. Doing so would require an expansion of the rules and may result in unintended consequences if unforeseeable circumstances arise.

Appearances at the Public Hearing:

The Department held a public hearing on the proposed on November 18, 2013, in Madison. Two individuals appeared at the hearing for informational purposes. Copies of the hearing registration slips and a transcript of hearing testimony are attached.

Summary of Public Comments and Agency Response:

The Department received the attached written comments in response to the proposed rule.

Modifications to the proposed rule resulting from public comments are as follows: none.

Public Comment: The rule does not seem to encompass regional revolving loan funds.

Department Response: The Department has revised Adm 93.16 to more clearly encompass all revolving loan funds.

Public Comment: A community should not have to follow state procurement rules when hiring a consultant.

Department Response: The issue of compliance with state procurement rules is not currently addressed in the proposed administrative rule, nor was it addressed under the commerce rule. The necessity of such a requirement may vary from program to program, and be driven by considerations of federal program rules, department experience, or other factors as the department deems appropriate.

Public Comment: The application process should be on-going.

Department Response: Unfortunately, considerations of limited resources of the Department, as well as good resource planning processes, do not support the on-going evaluation of applications.

Public Comment: Local governments should have voting representation regarding the application process rule making.

Department Response: Application processes are part of the basic business function of the Department's Division of Housing. As with any business operation, resource allocation is a key and basic administrative function, the discretion of which must be left to the executive branch of government.

Public Comment: For library projects, the 10% local funding should be eliminated.

Department Response: Local participation is an issue driven by a variety of considerations, including, but not limited to HUD regulations and interpretations thereof.

Public Comment: A designated amount of CDBG funds should be set aside for communities under 5,000.

Department Response: Grant distribution is an issue driven by a variety of considerations, including, but not limited to HUD regulations and interpretations thereof.

Final Regulatory Flexibility Analysis:

A final regulatory flexibility analysis was not prepared since the proposed rule will not have a significant economic impact on a substantial number of small businesses.