



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: December 14, 2022

TO: The Honorable Chris Kapenga
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
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FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Clearinghouse Rule 22-065 Final Draft Rule amending ATCP 161 and creating ATCP 163 relating to grants

Proposed Rule

The proposed rule is attached.

Reference to Applicable Forms

There are no applicable forms.

Fiscal Estimate and EIA

The fiscal estimate and EIA are attached.

Detailed Statement Explaining the Basis and purpose of the Proposed Rule, Including How the Proposed Rule Advances Relevant Statutory Goals or Purposes

The purpose of the rule is to create a new chapter for grants to create clarity between the grant programs and the Something Special from Wisconsin program. The rule eliminates the redundancies and conflicts between the accountability provisions throughout the current subchapters of ATCP 161. In order to create consistency, the new chapter ATCP 163 will have general grant requirements for agricultural and economic grants rather than each grant having their own specific provisions. In addition, general grant provisions advance the purpose of having rules in place to expeditiously award grant funds appropriated. The rule removes current obsolete or burdensome requirements and allows for electronic technology.

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Summary of Public Comments and the Department's Responses, Explanation of Modifications to Proposed Rules Prompted by Public Comments

The department held a public hearing on October 25, 2022. No one testified at the hearing or submitted written comments.

Response to Legislative Council Staff Recommendations

Comment 2.a.: In general, the proposed rule repeals administrative code provisions that govern identified grant programs in specific ways, and it creates administrative code provisions that apply more generally across multiple, unnamed grant programs. Although avoiding duplication that currently exists in ch. ATCP 161 is laudable, the agency should consider whether its approach unintentionally fails to carry forward to new ch. ATCP 163 any desirable grant-specific requirements or limitations currently contained in ch. ATCP 161. For instance, under s. 93.07 (18) (b) 1. and 2., Stats., the agency must establish clear and measurable goals and at least one quantifiable benchmark for each economic development program. Presumably those goals and benchmarks are contained in current ch. ATCP 161? If so, should they be included in new ch. ATCP 163? Similarly, current s. ATCP 161.63 (2) prohibits the use of a “grow Wisconsin dairy producer” grant from being used for capital acquisition, administrative or overhead expenses not directly related to the grant program, or repayment of loans or mortgages. Should those prohibitions be included in new ch. ATCP 163?

Response: For many of the agricultural and economical grants, the statutes provide grant specific requirements or limitations, including allowable purposes of the grant. The required clear and measurable goals and at least one quantifiable benchmark for each economic development program under s. 93.07 (18) (b) 1. and 2., Stats. are not currently listed in ch. ATCP 161 because the goals and benchmarks may be different for each offering of the grant depending on the needs of the industry at that particular time. In addition some of the grant programs currently in ch. ATCP 161 began prior to the enactment of s. 93.07 (18) (b) a. and 2., Stats. The listing of specific grant programs (especially those with specific application dates), creates a public expectation that the grant programs are funded even though the legislature may not have appropriated funding for the program. The “Grow Wisconsin Dairy Producer” grant and loan program is confusing because grants and loans are not offered to producers; rather the legislature has appropriated funding for dairy processor grants.

The department's position is that creating general grant provisions creates consistency, eliminates accountability conflicts and provides clarity for Wisconsin's citizens.

Comment 2.d.(1): In the list of definitions in s. ATCP 163.01: In sub. (3), “grants” is defined as “grants for agricultural or economic development”. A note indicates that these are grants administered by the Division of Agricultural Development. First, should this definition more clearly identify the range of grants covered by new ch. ATCP 163? For instance, current s. ATCP 161.50 (3) cross-references s. 93.07 (18) (a), Stats., and also recites a list of illustrative programs. Should that sort of delineation be carried forward to new ch. ATCP 163? Second, is the note intended to place a substantive limitation on the definition of “grants”? If so, that limitation should be placed in the rule text rather than in a note. [s. 1.12 (1) (b), Manual.] Third, “grants” should be changed to “grant”. The singular form of a word is preferred to the plural. [s. 1.05 (1) (c), Manual.]

Response: The current subch. V of ch. ATCP 161 implements s. 93.07 (18) (a), Stats. and therefore references the s. 93.07 (18) (a), Stats. definition. Further, by reciting the illustrative programs, the current subch. V of ch. ATCP 161 actually created conflicts with the specific named grant programs in ch. ATCP 161. The proposed ch. ATCP 163 incorporates the accountability measures of s. 93.07 (18) for all agricultural and economic development grants which is an expansion of the previously referenced definition. The department updated the note to indicate that agricultural or economic development grants are administered by the Division of Agricultural Development. The department recognizes that an agency may reorganize or change the name of a name, therefore, rather than placing a name in the rule to provide additional information, the department is utilizing a note to convey that information. It is not a substantive limitation. The department accepted the recommendation to change the plural form of the word “grant” to singular.

Comment 2.f.(2): In s. ATCP 163.04 (1): What is the purpose of the final sentence, which appears to authorize the agency official to sign a grant contract after the recipient signs? Is it necessary to state that? Rather, is it intended to prevent the agency official from signing before the recipient signs? If so, the language should be clarified, such as by adding the word “only” before the word “after”. Relatedly, given that grant funding is not final until the signing of a contract, the agency could revisit the requirement in s. ATCP 163.03 (3) that an agency official sign the grant award. Is that separate signature a meaningful aspect of a grant program?

Response: The department accepts the recommendation to remove the final sentence in s. ATCP 163.04 (1). The grant award is a meaningful aspect of the grant program. The grant award is offering the recipient the money. While the funding is not final until the signing of a contract, the grant award may be determined by a court to be binding. The grant award should be signed by an individual who has the authority to grant the money.

Comment 2.g: Consider adding an initial applicability clause to identify whether the revised rule has any applicability to applications, grants, or contracts in being. If the agency intends the proposed rule to apply only to new applications, the clause could state: “This rule first applies to grant applications that are submitted on the effective date of this rule.” [s. 1.03 (3), Manual.]

Response: The department considered adding an initial applicability clause. The department has the ability to coordinate the grant windows to correspond to the effective date of the rule.

Comment 4.b. In the rule summary’s listing of statutory authority, a citation to s. 19.36 (5), Stats., could be added. That statute authorizes a record authority to withhold from public disclosure a record containing a trade secret as defined in s. 134.90 (1) (c), Stats. In the proposed rule, s. ATCP 163.06 authorizes the agency to withhold such records from public disclosure.

Response: The rule summary’s listing of statutory authority includes each statute that authorizes its promulgation as required under s. 227.14 (2) (a) 1., Stats. An agency should cite the statute that explicitly grants authority to the agency to promulgate the rule [s. 1.01 92) (c), Manual]. Section 19.36 (5), Stats. does not grant authority to promulgate rules. In the proposed rule, s. ATCP 163.06 references the definition in s. 134.90 (1) (c), Stats. while providing notice that the department may withhold from public disclosure a document that meets that definition (pursuant to s. 19.36 (5), Stats.) if the applicant identifies the portion of an application at the time of filing the proposal with the department.

Comment 5.d.: In s. ATCP 163.05, there may be text missing after the word “annually” and before the comma. Should a word like “determine” appear there?

Response: The comma after the word “annually” was removed.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

Report from the SBRRB and Final Regulatory Flexibility Analysis

This rule does not have an impact on small businesses. The Final Regulatory Flexibility Analysis is attached.