

Publication Date: April 21, 2010
Effective Dates: April 21, 2010 through September 17, 2010

DEPARTMENT OF COMMERCE EMERGENCY RULE

The Wisconsin Department of Commerce adopts an order to create chapter Comm 121 relating to the small business innovation research assistance program, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by SECTION 9110 (16u) of 2009 Wisconsin Act 28, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Rule Summary

1. Statutes Interpreted.

Section 560.45.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.45 (3).

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.45 (3) of the Statutes requires the Department to promulgate rules for administering the small business innovation and research assistance grants established under subchapter III of chapter 560 of the Statutes.

4. Related Statute or Rule.

The Department has various rules for administering several economic development programs, including criteria in chapter Comm 129 for grants or loans to fund professional services related to completing an application to be submitted to the federal government for obtaining early stage research and development funding.

5. Plain Language Analysis.

These rules set forth the criteria the Department or its designee will use to administer the small business innovation and research assistance grants established under subchapter III of chapter 560 of the Statutes, as enacted in 2009 Wisconsin Act 28. These grants will assist businesses in the phase of development that precedes the eligibility of the businesses in the federal Small Business Innovation Research (SBIR) program, or businesses which are participating in the Phase III, commercialization portion of that program.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

The U.S. Small Business Administration (SBA) Office of Technology administers the federal SBIR program. Federal agencies with extramural research and development budgets over \$100 million are required to administer SBIR programs using an annual set-aside of 2.5% for small companies to conduct innovative research or research and development that has potential for commercialization and public benefit. Through this competitive program, SBA ensures that the nation's small, high-tech, innovative businesses are a significant part of the federal government's research and development efforts. Eleven federal departments participate in the SBIR program. As of May 2007, over \$12 billion had been awarded to various small businesses, and the current annual allocation, in combination with the parallel Small Business Technology

Transfer program, is over \$2 billion. The Department is not aware of any federal grants that provide funding for assistance with submitting applications or otherwise participating in the SBIR program.

7. Comparison With Rules in Adjacent States.

None of the adjacent States were found to have rules that are likewise primarily directed at providing grants to assist businesses with (1) establishing eligibility for or preparing applications for federal SBIR funding or (2) commercializing products developed through SBIR funding. However, Illinois provides grant-writing and consultant services for assistance in identifying, preparing, advancing and reviewing SBIR proposals – and Minnesota provides matching dollars to support commercialization of SBIR projects.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) applying the corresponding provisions in section 560.45 of the Statutes; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development and business development; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary documentation was used to determine the effect of the rules on small business was section 560.45 of the Statutes. The proposed rules and this section of the Statutes apply their private-sector requirements only to entities that choose to pursue a corresponding grant. No economic impact report was prepared.

10. Effect on Small Business.

The rules are expected to result in only beneficial effects on small business because the rules only address grants that will assist businesses in the phase of development which precedes the eligibility of the businesses in the federal SBIR program, or businesses that are participating in Phase III of that program.

11. Agency Contact Person.

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File reference: Comm 121rules, analysis

TEXT OF EMERGENCY RULE

SECTION 1. Chapter Comm 121 is created to read:

CHAPTER Comm 121 SMALL BUSINESS INNOVATION RESEARCH ASSISTANCE PROGRAM

Comm 121.01 Purpose and authority. (1) **PURPOSE.** The purpose of this chapter is to set forth the criteria the department or its designee will use to administer the small business innovation research assistance program established under subch. III of ch. 560, Stats.

(2) **AUTHORITY.** This chapter is promulgated under the authority in s. 560.45 (3), Stats.

Note: Section 560.45 (2) of the Statutes limits the Department to awarding no more than \$250,000 in grants under this chapter in each fiscal year.

Comm 121.02 Definitions. In this chapter, “Department” means the department of commerce.

Comm 121.03 Early stage technical assistance grants. (1) An eligible applicant under this section is an individual who is starting, developing or operating a Wisconsin business that is in the early stage research and development phase preceding eligibility for grants under the federal small business innovation research program.

(2) Eligible activities are the professional services provided by an independent third party that are necessary for the applicant to become eligible for the federal small business innovation research program and may include any of the following:

(a) Business planning.

(b) Accounting and financial organization.

(c) Grant writing assistance.

(d) Market development.

(e) Intellectual property costs.

(3) Annually the department or its designee shall allocate up to \$100,000 for grants under this section.

(4) A grant to an applicant under this section may not exceed \$15,000.

Comm 121.04 Technical assistance grants for small business innovation research. (1) An eligible applicant under this section is an individual who is starting, developing or operating a Wisconsin business and who is preparing an application for participation in the federal small business innovation research program.

(2) Eligible activities are the professional services provided by an independent third party that are necessary to prepare an application for participation in the federal small business innovation research program.

(3) Annually the department or its designee shall allocate up to \$50,000 for grants under this section.

(4) A grant to an applicant under this section may not exceed \$15,000.

Comm 121.05 Commercialization grants. (1) An eligible applicant under this section is a Wisconsin business that has received prior federal small business innovation research funding and is in the commercialization phase of this activity.

(2) Eligible activities are those that are necessary to participate in phase III of the federal small business innovation research program, and include work that derives from, extends, or logically concludes efforts performed under prior federal funding from that program.

(3) Annually the department or its designee shall allocate up to \$100,000 for grants under this section.

Comm 121.06 Match requirement. A minimum of 25% of eligible project costs shall be paid in cash and shall be from sources other than the state.

Comm 121.07 Criteria. The department or its designee shall consider the following when making an award under this chapter:

(1) The amount of economic impact the applicant, if successful, will have in this state.

(2) The quality of the professional service provider assisting the applicant.

(3) The level of need demonstrated by the applicant.

(4) Whether the applicant has or will have a business location in this state.

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

(END)

EFFECTIVE DATE

Pursuant to s. 227.24 (1) (c), Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper.