

EmR1309

Filed with LRB: June 28, 2013,
Publication Date: July 1, 2013
Effective Dates: July 1, 2013 to November 27, 2013
Hearing Date: November 18, 2013

ORDER OF THE DEPARTMENT OF ADMINISTRATION ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 041-13, was approved by the Governor on April 15, 2013, and published in Register No. 688 on April 30, 2013, and approved by the Department of Administration Secretary, Mike Huebsch, effective May 13, 2013. This emergency rule was approved by the Governor on June 19, 2013.

Finding of Emergency

Each year the federal government makes funding available to the several states for economic and housing development through a program known as the Community Development Block Grant Program (CDBG). The CDBG is governed under 42 USC 5301 to 5319 and 24 CFR Part 570, and is administered by the US Department of Housing and Urban Development (HUD). Since the dissolution of the Wisconsin Department of Commerce, the Wisconsin Department of Administration (DOA) has received CDBG grants from HUD, and entered into agreements with the Wisconsin Economic Development Corporation (WEDC) for the administration of those funds. Under this arrangement, state administrative code Chapter Commerce 108 was unneeded, as WEDC operated under substantially similar internal policies. Recently, DOA and WEDC have mutually determined that the expertise of DOA is better suited to administration of CDBG funds, while the expertise of WEDC is best suited to consultation with localities and businesses seeking to access CDBG funds. The parties intend to formalize the transfer of administrative responsibility of CDBG funds to DOA shortly. Consequently, it is imperative for the welfare of the State of Wisconsin that administrative code provisions concerning the CDBG program be made.

The Department of Administration hereby adopts an order to create Chapter Adm 93, relating to the community development block grant program.

Rule Analysis

- 1. Statute interpreted:** s.16.309, Stats.
- 2. Statutory authority:** ss. 16.309 (2) and (3), and 227.11, Stats.
- 3. Explanation of agency authority:**

The Department of Administration is empowered to enact rules necessary to receive CDGB funds under s. 16.309, Wis. Stats.

- 4. Related statute or rule:** s. 16.309, Stats.

5. Plain language analysis:

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

- a. Reconstitute many portions of the former ch. Comm 108.
- b. Decline to reconstitute portions of ch. Comm 108 which added unnecessary confusion by duplicating federal regulations where reference to such regulations will suffice, such as the former ss. Comm 108.04, 108.07 and 108.14(1).
- c. Decline to reconstitute portions of ch. Comm 108 which could vary from year to year, such as the table found in the former s. Comm 108.06.
- d. Decline to reconstitute portions of ch. Comm 108 that add complexity to the code without adding meaning, such as point ranges found in the former s. Comm 108.10.
- e. Such other changes as are necessary to comply with current HUD requirements, or which will otherwise increase the efficiency or effectiveness of the program and are allowed by HUD requirements.

6. Summary of and comparison with, existing or proposed federal regulations.

The proposed rules are derived from federal requirements.

7. Comparison with rules in adjacent states:

8. Summary of factual data and analytical methodologies:

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

10. Fiscal Estimate:

11. Effect on small business: The proposed rule changes will have no impact upon small businesses.

12. Agency contact person:

Lisa Marks, Administrator
Division of Housing
Department of Administration
101 E. Wilson Street, 5th Floor
Madison, WI 53702
(608) 267-0770

SECTION 1: Chapter Adm 93 is created to read:

Adm 93

**SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR
COMMUNITY AND ECONOMIC DEVELOPMENT**

Adm 93.01 Purpose and authority. (1) PURPOSE. The purpose of this chapter is to set forth the criteria the department will use to administer the Community Development Block Grant (CDBG) program with funds that the department receives from the federal government under 42 USC 5301 to 5319 and 24 CFR Part 570.

Note: Copies of 42 USC 5301 to 5319 and 24 CFR Part 570 are available on request from U.S. Government Printing Office (GPO); phone (202) 512-1530 or (888) 293-6498; fax (202) 512-1262. Copies also may be accessed from the webpage: <http://www.access.gpo.gov/nara/cfr>.

(2) AUTHORITY. This chapter constitutes the process for accepting, evaluating and scoring applications, and awarding of grants for the CDBG program as promulgated under the authority given in s. 16.309, Stats.

Adm 93.02 Eligibility. (1) Except as provided in sub. (2), any local government may apply for CDBG funds under this chapter.

(2) A local government that fails to comply with any of the administrative, underwriting, recordkeeping, reporting, auditing, closeout, payment, reimbursement or other requirements of this chapter may not apply for or receive CDBG funds from the department under this chapter until such time the noncompliance has been determined to be resolved to the satisfaction of the department.

Adm 93.03 Definitions. In this chapter:

(1) “Application” means an application for CDBG funds under this chapter.

(2) “Blight” has the meaning set forth in s. 66.1331 (3) (a), Stats.

Note: Section 66.1331 (3) (a), Stats., reads: “Blighted area” means any area, including a slum area, in which a majority of the structures are residential or in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, is conducive to ill health, transmission of disease, infant mortality, juvenile

delinquency and crime, and is detrimental to the public health, safety, morals or welfare.’

(3) “Blight elimination and brownfield redevelopment program” means the blight elimination and brownfield redevelopment program administered under subch. V.

(4) “Blighted property” has the meaning set forth in s. 66.1333 (2m) (bm), Stats. For the purposes of this chapter, the definition of blighted property shall apply to cities, villages, towns and counties.

Note: Section 66.1333 (2m) (bm), Stats., reads: “Blighted property” means any property within a city, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and is detrimental to the public health, safety, morals or welfare, or any property which by reason of faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair market value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any property which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.’

(5) “Blighted site or brownfield site redevelopment project” means any work or undertaking by a local government to acquire a blighted or brownfield site, to conduct an environmental audit, to engage in environmental remediation, and to raze, demolish, remove, reconstruct, renovate or rehabilitate existing buildings, structures or other improvements to promote use of a blighted or brownfield site by a business or person for purposes that will result in end uses with a taxable value in accordance with an approved blighted or brownfield site redevelopment plan.

(6) “Blighted site or brownfield site” means an abandoned, idle or underused industrial or commercial facility or site in a blighted area, or that qualifies as a blighted property, the expansion or redevelopment of which is adversely affected by actual or perceived environmental pollution.

(7) “CDBG funds” means community development block grant funds awarded to the department by the federal government under 42 USC 5301 to 5319.

(8) “Department” means the department of administration.

(9) “Economic development program” means the economic development program administered under subch. III.

(10) “Eligible local government” means a local government that is eligible to apply for and receive CDBG funds under the U.S. Department of Housing and Urban Development’s State and Small Cities Program pursuant to 24 CFR 570.3.

(11) “Emergency grant program” means the program administered under subch. VI.

(12) “Environmental audit” means an investigation, analysis and monitoring of a brownfield site to determine the existence and extent of actual or potential environmental pollution.

(13) “Environmental pollution” has the meaning set forth in s. 291.01 (4), Stats.

Note: Section 291.01 (4), Stats., defines “environmental pollution” to mean “the contamination or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.”

(14) “Environmental remediation activities” has the meaning set forth in s. 238.13 (1) (d), Stats.

Note: Section 238.13 (1) (d), Stats., reads: “Environmental remediation activities” means investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environmental pollution; abating, removing or containing environmental pollution at a brownfields facility or site; or restoring soil or groundwater at a brownfields facility or site.’

(15) “Full-time job” has the meaning set forth in s. 71.07 (2dx) (a) 4., Stats.

Note: Section 71.07 (2dx) (a) 4. reads: “Full-time job” means a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. “Full-time job” does not include initial training before an employment position begins.’

(16) “HUD” means the U.S. Department of Housing and Urban Development.

(17) “Local government” means a city, village, town, or county that is in a nonentitlement area as defined in 24 CFR 570.3 and is not eligible to directly apply for or participate in the federal block grant entitlement program.

(18) “Low to moderate household income” means the median household income in the county where the local government is located, as reported by the latest U.S. census and updated periodically by the HUD.

(19) “Municipality” means a local government that is eligible for CDBG funds under s. Adm 93.02.

(20) “Net mill rate” means the total of all property taxes levied by the local government for all purposes less general property tax relief payments divided by the estimated market value of taxable property in the municipality.

(21) “Person” means an individual, partnership, corporation, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy.

(22) “Public facilities economic development program” means the public facilities economic development program administered under subch. IV.

(23) “Public facilities plan” means a written plan for proposed project for which an eligible local government may seek funding under subch. VII.

(24) “Public facilities program” means the annual public facilities program administered under subch. II.

(25) “Residential utility rate” means for areas served by public water and sanitary sewer service, the average annual household utility rate paid for water and sanitary sewer services determined by dividing the total gross annual residential water and sewer revenue collected for the preceding calendar year by the number of households, as reported by the latest U.S. census and updated periodically by the U.S. department of commerce.

(26) “Site redevelopment plan” means a plan adopted by a local government for the acquisition, clearance, reconstruction, rehabilitation and future use of a blighted or brownfield site.

Adm 93.04 National objectives. A project funded with CDBG funds under this chapter shall meet one or more national objectives as enumerated in and required by 24 CFR 570.

Adm 93.05 Application materials. The department shall prepare application materials which may be updated as needed. The application materials shall set forth

the application instructions and requirements for funding under the programs described in this chapter.

Note: Application materials are available on request without charge from the department of administration, division of housing, P.O. Box 7970, Madison, WI 53707; phone (608) 266-7531; fax (608) 266-5381. Application materials may also be accessed from the department of administration webpage:

<http://doa.wi.gov/index.asp?locid=173>

Adm 93.06 Distribution of funds. (1) For each annual grant of CDBG funds the department receives from the federal government, the department shall establish distribution amounts.

(2) Program income received by the department under this chapter shall be allocated for awards under any program administered under this chapter.

Adm 93.07 Limits upon awards. (1) The maximum amount of CDBG funds that may be awarded to any local government under the public facilities program, as specified under subch.II, in a 12-month period, shall be announced by the department in its application instruction manual.

Adm 93.08 Construction. This chapter shall be liberally construed to effect the national objectives set forth in s. Adm. 93.04 and 24 CFR 570.

Subchapter II – Public Facilities Program

Adm 93.09 Public facilities program. (1) GENERAL.

(a) The department may award a grant to an eligible local government for a public facilities project based upon the department's evaluation of all applications received from eligible local governments. The department's evaluation shall be established based upon the scoring system set forth in its application instruction manual.

(b) The minimum local financial participation as specified in the application instruction manual may be waived when the specific project has a particular urgency because existing conditions pose a serious and immediate threat to the safety, health or welfare of the community, where other financial resources are not available to meet such needs or when the specific project is located in a distressed area.

Adm 93.10 Distress indicators. The department shall award points to a local government based upon the department's evaluation of the documented level of distress, as set forth in the department's application instruction manual.

Adm 93.11 Needs assessment. The department shall award points to a local government based upon the department's evaluation of the local government's

documented need for the public facilities project, as set forth in the department's application instruction manual.

Adm 93.12 Utility rates. The department shall award points to an eligible local government based upon the department's evaluation of the local government's ability to pay for the public facilities project, as measured by the local residential utility rates, as set forth in the department's application instruction manual.

Adm 93.13 Leveraging. The department shall award points to a local government based upon the department's evaluation of the local government's leveraging of CDBG funds with funds from other public or private sources, as set forth in the department's application instruction manual. To qualify for points under this section, a local government shall document the availability of firm commitments for the balance of project funding from creditworthy sources to ensure timely completion of the project.

Subchapter III — Economic Development Program

Adm 93.14 Economic development program. The department may award a grant to an eligible local government under the economic development program upon receipt and consideration of an application. When making a determination regarding an application, the department shall consider the extent of poverty and unemployment and other economic factors in the area of the project.

Adm 93.15 Job creation and retention requirements. (1) If an eligible local government awards CDBG funds received under this subchapter, to any person, whether as a grant or a loan, the person shall execute an agreement and other documents prescribed by the department, committing to create full-time equivalent jobs or retain full-time equivalent jobs, or both, in accordance with 24 CFR Part 570, as required by the department.

(2) The department may require a person that receives an award under this subchapter to document full-time equivalent job creation and retention with a list of full-time jobs or positions created and retained, the job title for each full-time equivalent job created and retained, job skills, wages and benefits, and any other information the department considers relevant.

Adm 93.16 Revolving loan funds. (1) An eligible local government that is awarded CDBG funds under this subchapter may retain program income from all grants awarded to establish and capitalize a revolving loan fund to promote further economic development either directly, or through a sub-grantee as authorized by sec. 105(a)(15) of the Housing and Community Development Act of 1974. Any such fund shall be subject to the limitation set forth in sub. (2). A local government that establishes a revolving loan fund under this section shall further administer and use the fund in accordance with all applicable requirements established by the federal

government and the department, and shall require the same of any fund administered by a sub-grantee.

(2) Any local government that establishes a revolving loan fund under this subchapter shall report to the department on the use of such a fund on forms and at such times as prescribed by the department, or shall require any sub-grantee to do so. The department may establish a maximum amount of program income that may be retained by local governments or sub-grantees in any revolving loan fund, and may establish a maximum amount of time for which funds may be held without use, either as a separate or as a combined limitation. Any amount of program income in excess of the maximum amount or time established by the department shall be immediately remitted to the department by the local government or sub-grantee.

SUBCHAPTER IV

Adm 93.17 Public facilities economic development program. (1) The department may award a grant to an eligible local government under the public facilities economic development program following consideration of some or all of the following:

- (a) The project serves a public purpose.
- (b) The project costs are reasonable.
- (c) All sources of project financing will be committed prior to the disbursement of the grant.
- (d) The project is financially feasible.
- (e) The project will likely retain or create jobs in this state.
- (f) The local government will use the CDBG funds for one of the following purposes:
 - 1. A public facilities project or other public infrastructure improvements to facilitate a business's efforts to engage in job creation or retention activities under 24 CFR 570.483 (b) (4) designed to benefit low and moderate income persons.
 - 2. Other activities under 24 CFR Part 570 that meet the national objective of benefit to low and moderate income persons through job creation.
 - 3. Activities under 24 CFR 570.483 (c) that meet the national objective of preventing or eliminating slums or blight.

(g) The local government will contribute at least 25% of the total cost of the project from funding sources other than grants from the federal and state government, subject to s. Adm 93.09 (1) (b).

(2) When making a determination under sub. (1), the department shall consider all of the following:

(a) The extent of poverty and unemployment and other economic factors in the area of the project.

(b) The prospects for new investment and economic development in the area.

(c) The amount of investment that is likely to result from the project.

(d) The number of full-time jobs that are likely to be created or retained.

(e) The total cost per full-time job created or retained.

(f) The amount of wages and benefits to be provided by the business that will create or retain the full-time jobs.

(g) Whether the award will provide the business with an unreasonable competitive advantage over other similar Wisconsin businesses in the vicinity of the project.

(h) Whether the project will involve the relocation of a business and displacement of jobs from one municipality in Wisconsin to another municipality in Wisconsin.

(i) Whether the project will result in redevelopment of a brownfield site.

(j) Whether the project will result in the elimination of slum or blight.

Adm 93.18 Job creation and retention requirements. **(1)** A business that will benefit from a public facilities economic development project shall execute a development agreement and other documents prescribed by the department, committing to the creation and retention of full-time jobs.

(2) The amount of CDBG funds awarded by the department for a public facilities economic development project under this subchapter may not exceed an amount determined by the department for each full-time job created or retained by the business.

(3) The department may require businesses that benefit from grants under this subchapter to document full-time job creation and retention with a list of full-time jobs or positions created and retained, the job title for each full-time job

created and retained, job skills, wages and benefits, and any other information the department considers relevant.

Subchapter V — Blight Elimination and Brownfield Site Redevelopment Program

Adm 93.19 Blight elimination and brownfield site redevelopment program. (1)

The department may make a grant to an eligible local government for a blighted or brownfield site redevelopment project after the department considers some or all of the following:

(a) Whether the project is intended to address the national objective of preventing or eliminating slums or blight set forth in 24 CFR 570.483 (c) and s. Adm 93.04 (3).

(b) The extent of poverty and unemployment and other economic factors in the area of the project.

(c) The prospects for new investment and economic development in the area.

(d) The amount of investment that is likely to result from the project.

(e) The likelihood that the project will result in the creation or retention of full-time jobs in the area.

(f) The amount of estimated tax base to be created at project completion.

(g) The likelihood that the proposed activity will commence shortly after receipt of the grant.

Adm 93.20 Blight elimination and brownfield site redevelopment project requirements and limits. A local government receiving CDBG funds from the department under this subchapter may use such funds for an environmental audit or environmental remediation, or may loan or grant the CDBG funds to a business or nonprofit corporation to conduct an environmental audit or environmental remediation.

Subchapter VI — Emergency Grants

Adm 93.21 Eligibility. (1) The department may award a grant to an eligible local government under this subchapter upon receipt of an application and upon the department's consideration of whether:

(a) The municipality has suffered a natural disaster or other catastrophic event.

(b) The project is designed to alleviate existing conditions which pose a serious and immediate threat to the health, safety or welfare of the municipality.

(c) The local government will use the grant to pay for public infrastructure repairs or replacements that are otherwise eligible for CDBG funds under subch. II, or emergency services necessitated by the natural disaster or other catastrophic event.

(d) The local government lacks the financial capability to pay for the infrastructure repairs or replacements.

(e) The local government is unable to await funding through a grant awarded under subch. II.

(f) The local government will contribute at least 25% of the total cost of the project from other funding sources, subject to s. Adm 93.09 (1) (b).

(g) Other criteria as set forth in 24 CFR 570.

(2) In making a determination under sub. (1) (d), the department shall consider all of the following:

(a) The local government's general obligation debt borrowing capacity.

(b) The availability of funding from other federal and state government sources.

(c) The availability of insurance.

(d) Any other factors the department considers relevant.

Adm 93.22 Funding. (1) The maximum amount of CDBG funds that may be awarded to any local government under this subchapter shall be based on the scope of the natural disaster or catastrophic event and funds available.

(2) Where a catastrophic event is caused by human activity and the local government recovers funds to repair the damage from a responsible person or another party, then the local government shall pay the department a proportionate share of the total amount recovered.

Adm 93.23 Applications. (1) A local government interested in applying for an emergency grant under this subchapter shall provide the department with written notice of intent to apply within 90 days of the natural disaster or catastrophic event.

(2) An application for emergency assistance under this subchapter shall include the following:

- (a) Documentation of a state or federal disaster declaration or a description of the natural disaster or catastrophic event.
- (b) A description of the resulting damage or destruction.
- (c) A description of the activities that will be funded with the emergency grant.
- (d) A budget evidencing that the local government has matching funds to cover at least 25% of the total cost of the project, subject to s. Adm. 93.09 (1) (b).
- (e) A discussion of alternative remedies available to the local government.
- (f) Any other information that the department considers relevant.

Subchapter VII — Planning Grants.

Adm 93.24 Planning grant program. (1) GENERAL.

(a) The department may make a grant to an eligible local government for preparing a plan for a specific project.

(b) An eligible local government may submit an application for a planning grant to the department at any time.

(2) APPLICATION. An application for a planning grant under this section shall contain sufficient information to identify how all of the following requirements are satisfied:

(a) The local government has identified a specific project that needs further planning.

(b) The specific project will serve a public purpose.

(c) The specific project is an eligible CDBG activity.

(d) The local government has a citizen participation plan as required under 24 CFR 570.486 (a).

(e) The specific planning cost estimates are reasonable.

(f) At least 25% of the total cost of the planning shall originate from sources other than grants provided by the federal or state government.

(g) The planning for the specific project has the support of local community or economic development organizations or business groups.

(h) The local government has the capacity and capability to conduct the planning or commits to the retention of professional planning services.

(i) The planning will likely result in the implementation of the specific project being planned.

(j) The local government certifies that the planning grant is not a commitment of CDBG funding at a later date for plan implementation.

(k) The application shall include, where applicable, at least the following:

1. An analysis of the current status and any deficiencies in public facilities, services, buildings or a defined geographic area.

2. An analysis of alternative means of correcting such deficiencies described in subd. 1.

3. A written plan for the selection of a proposed course of action, a narrative description, cost estimates and map of the project location or defined geographic area.

(3) OTHER CONSIDERATIONS. When reviewing the applications received under sub. (2), the department shall consider some or all of the following:

(a) Whether the specific project plan is intended to address one of the 3 national objectives as specified in s. Adm 93.04.

(b) The extent of poverty, unemployment, labor shortages or other economic factors in the specific project area.

(c) The prospects for other new investment and community and economic development in the specific project area.

(d) The amount of additional investment and improved public health and safety that is likely to result from the plan implementation.

(e) The likelihood that the specific project will result in the preservation or expansion of the existing tax base.

(f) The planning for the specific project is consistent with other planned or recently completed community or economic development projects such as, but not limited to, smart growth planning as specified in s. 16.965 (1) (b), Stats.

SECTION 2: EFFECTIVE DATE. The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

By: _____ Date: June 25, 2013
Mike Huebsch, Secretary
Wisconsin Department of Administration