

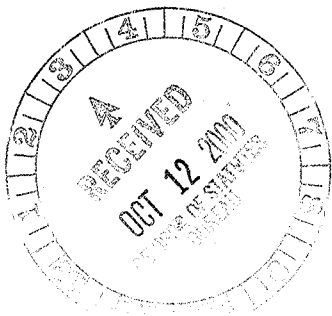
Clearinghouse Rule 00-081

RULES CERTIFICATE

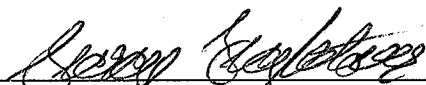
State of Wisconsin)
) ss.
Department of Administration)

I, George Lightbourn, Secretary of the Wisconsin Department of Administration, and custodian of the official records, certify that the attached administrative rule relating to Energy Conservation and Efficiency and Renewable Resources Programs was duly approved and adopted by the Department of Administration on October 11, 2000.

I further certify that this copy has been compared by me with the original on file with this Department and that it is a true copy thereof and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand in the City of Madison, Wisconsin this 11 day of Oct, 2000.

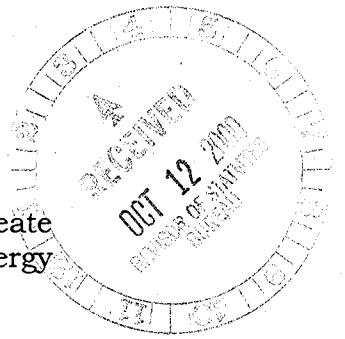

George Lightbourn, Secretary
Department of Administration

00-081

12-1-00

ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to create chapter Adm 44 of the Wisconsin Administrative Code, relating to Energy Conservation and Efficiency and Renewable Resource Programs.



Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004(1) and 16.957(2)(c), 2., 2m. and 2n., Stats.

Statutes Interpreted: s. 16.957(2)(b) and (3)(b), Stats.

Under s. 16.957(2)(c)2, 2m., and 2n., Stats., the Department of Administration is required to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs. The proposed rule establishes requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the Department for energy programs established under s. 16.957(2)(b), Stats.

The Department believes it is neither wise nor practical to include specific detail in this rule to cover programs that are not yet in existence. These programs will be developed over a longer period of time, with a wide range of input from the Council on Utility Public Benefits, potential program providers, and recipient citizens. They will develop as the needs of the energy efficiency and conservation market becomes clearer and our collective knowledge is increased.

Examples of the variety of programs to be created under s. 16.957(2)(b) 1., Stats., run the gamut from a simple rebate of a few cents for the purchase of energy efficient products or services to programs requiring complete engineering audits of industrial plants, arrangement of financing, performance contracting and multi-year performance monitoring. The requirements, procedures and related selection criteria necessary to implement these varying programs cannot be specified with detail in this rule. Rather, the rule is designed to allow flexibility for development of policies and procedures through detailed policy and procedure manuals for each program, consistent with Department practice for low-income assistance programs now in effect under sections 16.385 and 16.39, Stats.

Section Adm 44.03 defines terms necessary for implementation of subsequent programs under these rules. "Contractor" refers to the individual or entity that enters into a grant agreement with the program administrator, who in turn is charged with implementing grant solicitation and awards for the Department. In essence, a contractor is the functional equivalent to a subcontractor of the Department. "Program administrator" is specifically defined as a non-stock, nonprofit corporation organized under chapter 181, Stats., as required by s. 16.957(3)(b), Stats. As noted, the program administrator actually functions under the auspices of the Department to solicit, award and oversee grants awarded under programs to be developed from public benefits fee revenues.

Section Adm 44.04 provides general guidance to future program administrators acting for the Department. Section 16.957(3)(b), Stats., requires the program administrator to use a competitive process in soliciting proposals or bids. The Department will utilize the competitive procurement requirements under s. 16.70, et seq., Stats., when selecting the program administrator. However, in consultation with potential program administrators and likely contractors, the Department believes there may be situations in which the specific procedures and requirements to be used to procure a program administrator may not be necessary or advisable when a program administrator solicits proposals from potential contractors. The requirements necessary for each grant proposal solicitation will be dependent upon the specific program to be developed.

Section Adm 44.04 also provides notice requirements in order to cast as wide a net as possible in soliciting grant proposals. Since the exact programs are yet to be developed, it is uncertain what will be included on an application. The rule, therefore, contains a note that forms (as they are developed) may be obtained by contacting the Department.

Section Adm 44.05 provides overarching criteria for program administrators to use in evaluating and awarding grant applications. These include the requirements of s. 16.957(2)(b) 1., Stats., and information involving the qualifications and financial soundness of the applicant, the technical feasibility and quality of the proposed work plan, compliance with the policies and goals of the various public benefits program or programs to be developed, and any other relevant factors that may arise dependent upon the specific program. Subsections Adm 44.05(3) and (4) allow for the Department's review of a contractor *tentatively* selected by a program administrator, which the Department may reject for cause within 5 days of receipt of a notice of intent to award. If the Department rejects a proposed contractor, the program administrator may appeal under s. Adm 44.06. The appeals process is internal within the Department. While an appeal is pending, the program administrator may not enter into a grant agreement with a proposed contractor. Any grant agreement entered into during this period is voidable.

Section Adm 44.07 provides brief guidelines for grant agreements. Essentially, the Department intends to utilize the terms and conditions and it now uses in its various grant agreements and contracts. However, because those may change or be negotiated on a case by case basis, the Department intends to utilize the process that it now follows in its normal procurements. That is, the specific contract terms and conditions will be developed from the Department's "standard" language depending on the program under consideration.

Section Adm 44.08 addresses the requirements of s. 16.957(2)(b) 2., Stats., that the Department determine whether the need for energy conservation, efficiency and renewable resource program established is satisfied by the private sector market and if so, whether it should be continued, discontinued or reduced. Beginning no later than March 1, 2004, this determination will be made annually. The criteria used to make this determination was developed in conjunction with potential program administrators and contractors who

presently deliver energy conservation and efficiency and renewable resource programs. They are listed in section Adm 44.09.

Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

TEXT OF RULE:

SECTION 1: Adm 44 is created to read.

Chapter Adm 44

Energy Conservation and Efficiency and Renewable Resource Programs

Adm 44.01 Authority. Sections 16.004(1) and 16.957(2)(c), Stats., authorize the department to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs.

Adm 44.02 Purpose. The purposes of this chapter are to establish requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the department for energy programs established under s. 16.957(2)(b)1., Stats., and to determine public benefits program continuation or reduction.

Adm 44.03 Definitions. In this chapter:

- (1) "Commission" means the public service commission.
- (2) "Contractor" means a person who enters into a grant agreement with a program administrator.
- (3) "Department" means the department of administration.
- (4) "Division administrator" means the administrator of the division of energy and public benefits in the department of administration, or a designee.
- (5) "Grant" means a financial award by the department to a contractor selected by a program administrator for the purpose of implementing a public benefits program.
- (6) "Grant agreement" means a contract between a program administrator and a contractor containing the terms and conditions of a grant awarded under s.16.957 (2)(b), Stats.
- (7) "Person" has the meaning set forth in s. 990.01(26), Stats.

(8) "Program administrator" means a non-stock, non-profit corporation organized under chapter 181, Stats., that contracts with the department to administer and select contractors for a public benefits program under s. 16.957(3)(b), Stats., or a designee approved by the department.

(9) "Public benefits program" means a program established in accordance with s. 16.957(2)(b)1., Stats., and designated as such in a contract between the department and a program administrator under s. 16.957(3)(b), Stats.

Adm 44.04 Grant solicitation and public notice. (1) **COMPETITIVE SOLICITATION.** A program administrator soliciting proposals for grants under s. 16.957(3)(b), Stats., shall ensure that all solicitations are conducted in a manner that provides for fairness and competition whenever practicable.

(2) **PUBLIC NOTICE.** (a) A program administrator shall provide reasonable public notice of all solicitations of grant proposals under s. 16.957(3)(b), Stats. Notice may be made through the print, broadcast, or telecommunications media, including the Internet, at the discretion of the program administrator. The notice period shall be as specified in the contract entered into between the department and the program administrator under s. 16.957(3)(b) Stats., which shall be commensurate with the scope of the grant.

(b) The notice shall include the purpose of the grant, the selection criteria, application procedures, and all applicable solicitation deadlines that an applicant is required to meet, or shall contain instructions for obtaining this information.

(3) **APPLICATION REQUIREMENTS.** All applications for a grant under s. 16.957(2)(b)1., Stats., shall be submitted to the department or the program administrator as directed in the notice provided under this section, on forms prescribed by the department. All applications shall be fully completed, executed by an individual having authority to act for the applicant, and submitted by the required filing deadline.

Note: Application forms may be obtained by contacting the Division of Energy and Public Benefits, Department of Administration at 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707-7868, or by telephone at (608) 266-8234.

Adm 44.05 Contractor selection criteria. (1) Prior to the solicitation of a grant under s. 16.957(2)(b)1., Stats., the program administrator shall submit to the department the selection criteria to be used to evaluate grant applications and to select a contractor. Selection criteria for all proposals shall be designed to evaluate the following:

(a) Compliance with s. 16.957(2)(b)1., Stats.

(b) Qualifications and financial soundness of the applicant.

(c) Technical feasibility and quality of the proposed work plan, including the feasibility of the proposed goals and performance measures and feasibility of the environmental and economic benefits identified as objectives of the application.

(d) Compliance with any of the policies and goals of the public benefits program issued by the department.

(e) Other factors the department or program administrator considers relevant.

(2) The department may modify or reject the proposed criteria in writing to the program administrator. The division administrator and the program administrator may negotiate new criteria to replace any modified or rejected criteria.

(3) The program administrator shall notify the division administrator in writing of its intent to make a grant award to a contractor, but shall not enter into a grant agreement with the selected contractor for at least five (5) business days after notice is received by the division administrator. The program administrator may choose to negotiate a combination of proposals from various contractors, if the program administrator determines that such a combination would better meet the objectives of its contract with the department.

(4) The department may reject a proposed contractor for cause in writing within five (5) business days of the receipt of a program administrator's notice of intent to award. A program administrator may appeal a rejection of a proposed contractor under s. Adm 44.06.

Adm 44.06 Appeals. [1] RIGHT TO PROTEST. A program administrator that disputes the department's rejection of a selected contractor under s. Adm. 44.05 may protest to the department. The protest shall be served in writing on the division administrator within 15 days of the receipt of the department's rejection of a selected contractor.

[2] AUTHORITY TO RESOLVE PROTESTS. The division administrator may settle and resolve any protest brought under this subsection. If the protest is not resolved by mutual agreement, the division administrator shall issue a written decision to the program administrator.

[3] APPEAL. A program administrator may appeal the decision of the division administrator by alleging a violation of statute or a provision of this chapter to the secretary of the department within 30 calendar days of issuance of the division administrator's decision. The secretary or designee shall take necessary action to settle and resolve the appeal and shall issue a decision in writing which shall be mailed or otherwise served on the program administrator.

[4] GRANT AGREEMENT STATUS DURING APPEAL PROCESS. A program administrator shall not enter into a grant agreement with a proposed contractor while a decision is pending from the division administrator under a protest, or

from the department secretary under an appeal. A grant agreement entered into while a protest or appeal is pending shall be voidable.

Adm 44.07 Grant agreements. The department shall provide the program administrator with terms and conditions to be used in all grant agreements between a program administrator and a contractor. Failure of a selected contractor to execute a grant agreement shall result in withdrawal of the offer to award. Upon approval of the division administrator, the program administrator may negotiate modifications to the terms and conditions of the standard grant agreement prior to its execution. The grant agreement shall include the following minimum terms and conditions:

(1) Quantifiable goals and performance measures that contribute to meeting the priorities of s. 16.957(2)(b)1.a., Stats. and the specific objectives of the grant agreement.

(2) A requirement to cooperate fully with independent evaluators and financial auditors, identified by the department, in evaluations and audits of the work performed under the terms of the grant agreement.

Adm 44.08 Program continuation, discontinuation or reduction. (1) Beginning December 31, 2003 and each succeeding December 31 thereafter, the department shall submit to the council on utility public benefits a report containing recommendations for the continuation, discontinuation or reduction in the energy conservation and efficiency and renewable resource programs operated under s. 16.957(2)(b)1., Stats. The report shall include a determination as to whether each program need has been satisfied by the private sector market.

(2) After receiving advice from the council on utility public benefits, the department shall annually determine and make public, no later than March 1, 2004 and every March 1 thereafter, its decision to continue, discontinue or reduce the energy efficiency and renewable energy program operated under s. 16.957(2)(b)1., Stats. The department shall also determine the total funding need for the programs to be continued or continued at reduced funding levels.

(3) The total funding amount determined under this section shall be used in the calculation of the aggregate public benefits fee under s. Adm 43.04. The department shall notify the commission of this amount as required under s. 16.957 (2)(b)2., Stats.

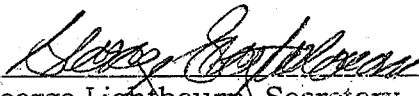
Adm 44.09 Establishing continuation, discontinuation or reduction criteria. The department shall include the following in the report submitted to the council on utility public benefits under s. Adm. 44.08(1):

(1) An analysis demonstrating whether the need for a program established under s. 16.957(2)(b)1., Stats., is satisfied by the private sector market and, if so, a determination whether the program should be discontinued or reduced.

- (2) An assessment of the progress of efforts to transform relevant markets into markets that capture a significant portion of the available cost-effective energy efficiency potential.
- (3) An analysis of the benefits that state residents receive as a result of the programs under s. 16.957(2)(b)1., Stats.
- (4) An analysis of the accomplishments of the program in meeting the priorities of s. 16.957(2)(b)1.a., Stats.
- (5) An analysis of the geographic distribution of funds and benefits under programs operated under s. 16.957(2)(b)1., Stats.
- (6) Other information and analysis that will assist the council on utility public benefits to provide advice under s. Adm 44.07(2).

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: 10-11-00


George Lightbourn, Secretary
Department of Administration

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Dept of Admin Chap 44

Subject

Energy Conservation and Efficiency and Renewable Resource Programs

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The administrative rule proposes requirements, procedures, and criteria for energy grant funding. The rule also establishes procedures for the department to address program continuation, reduction or discontinuation as of December 31, 2003. An appeal process is created. The department is reviewing staffing requirements for the program and what cost may be associated with those requirements.

Long-Range Fiscal Implications:

Ongoing costs for the duration of the program.

Prepared By: / Phone # / Agency Name
 Richard Wagner/ 608-266-0653 /DOA

Authorized Signature / Telephone No.
 Chuck McDowell/ 608-267-3836

Date
 4/11/00

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



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October 12, 2000

✓ Mr. Gary Poulson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

✓ Douglas La Follette
Secretary of State
30 W. Mifflin St., 10th Fl.
Madison, WI 53703

TRANSMITTAL OF RULE ADOPTION - Adm 44

RE: Energy Conservation and Efficiency and Renewable Resources Programs


Dear Messrs. Poulson and La Follette:

Pursuant to s. 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the Officers of the Secretary of State and the Revisor of Statutes.

Enclosed, please find a rule certificate form, order of adoption and rule in final draft form as well as a fiscal estimate.

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

Respectfully submitted,


George Lightbourn
Secretary

Enclosure

