

RULES CERTIFICATE

Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, William J. McCoshen, Secretary of the Department of Commerce,

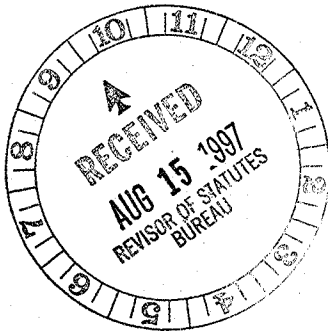
and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to

Community Development Block Grant Program

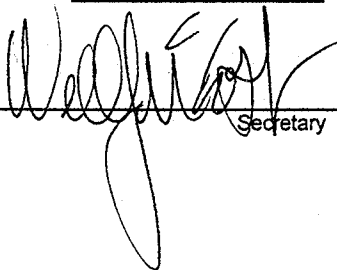
(Subject)

were duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.



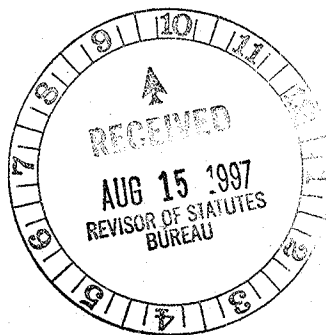
IN TESTIMONY WHEREOF, I have hereunto set
my hand at 2:00 PM
in the city of Madison, this 8th
day of August A.D. 19 97


Secretary



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM



Rule No.: DOD 6 and Comm 108

Relating to: Community Development Block Grants

Clearinghouse Rule No.: 97-037

DEPARTMENT OF COMMERCE

RULE RELATING TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The Department of Commerce (formerly Development) hereby adopts a rule to repeal subchs. I, II and III of ch. DOD 6 and to create Comm 108, relating to the Community Development Block Grant Program.

Analysis of Rules

Statutory Authority: ss. 16.54 and 560.02(4), Stats.

Statutes Interpreted: 42 USC 5301 to 5319.

Pursuant to sec. 560.02(4), the Department of Commerce is responsible for administering the federal community development block grant ("CDBG") funds awarded to the State of Wisconsin under 42 USC 5301 to 5319. Under applicable federal law, the department is authorized to award CDBG funds to any city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program, and to any county other than an urban county as defined by the United States Department of Housing and Urban Development ("HUD"). Historically, the department's rules have authorized eligible communities to use CDBG funds for public facilities projects, public facilities projects to promote economic development, economic development projects, and emergency situations caused by natural disasters and other catastrophic events. Recent amendments to the applicable federal regulations authorize the use of CDBG funding for additional purposes including the prevention and elimination of slum and blight.

The objectives of the new rule are to update the department's CDBG program, to authorize the use of CDBG funds to accomplish additional objectives authorized under applicable federal law, and to locate the department's rules relating to the CDBG program into a single chapter, separate from the department's state funded economic development programs. With the exception of the following key changes, the proposed rules are similar to the current rules set forth in subchapters I, II and III of DOD 6:

1. Under the current rule, any local government may apply for CDBG funds if it qualifies as a city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program, or as a county, other than an urban county as defined in 42 CFR 570.3. Under the new rule, s. Comm 108.02 (2), a local government that otherwise satisfies those requirements will not be eligible to apply for and receive CDBG funds if it fails to comply with any of the administrative, underwriting, recordkeeping, reporting, auditing, closeout, payment, reimbursement and other requirements mandated by HUD and the department.

2. Under the current rule, a local government may receive CDBG funds if its project addresses the national objective of benefiting low and moderate income persons or, alternatively, is designed to alleviate existing conditions which pose a serious and immediate threat to the health, safety or welfare of the municipality. The new rule expands the number of eligible activities and authorizes the use of CDBG funds for the redevelopment of brownfield sites, in furtherance of the national objective of preventing and eliminating slums and blight.

3. Out of each annual grant of CDBG funds from the federal government, the current rule authorizes the department to set aside up to 75% for public facilities projects, up to 75% for economic development projects, up to 10% for public facilities economic development projects, and up to \$1 million for emergency grants. The new rule changes the foregoing allocation by authorizing the department to allocate up to 10% for the blight elimination and brownfield redevelopment program, and up to 5% for the emergency grant program.

4. Under the current rule, the department may award a local government up to \$750,000 for a public facilities project, up to \$1 million for an economic development project, and up to \$500,000 for a public facilities economic development project. The new rule modifies those limits by authorizing the department to award a local government up to \$750,000 for a public facilities project, up to \$1 million for an economic development project, up to \$750,000 for a public facilities economic development project, up to \$100,000 for an environmental audit of a brownfield site, up to \$500,000 for environmental remediation of a brownfield site, and up to \$500,000 for emergency assistance following a natural disaster or other catastrophic event.

5. Under the current rule, the department allocates CDBG funds for public facilities on an annual basis, based upon a comparative ranking of each application using the following criteria: distress; needs; planning; past effort; ability to pay; and, leveraging. The department's new rule eliminates scoring of local government applications based upon planning and past effort.

6. Under the current rule, the department's determination whether an economic development project or a public facilities economic development project will serve a public purpose is based upon consideration of various factors including: the extent of poverty and unemployment; the prospects for new investment and economic development; the amount of investment that is likely to result; the number of jobs that are likely to result; the total cost per job; the amount of wages and benefits provided; the willingness of the business to work cooperatively with the department of workforce development, local job service offices and private industry councils to identify and offer job opportunities to low to moderate income persons; the availability of satisfactory collateral and personal guarantees to assure repayment of economic development loans; whether the award will provide the business with an unreasonable competitive advantage over other similar Wisconsin businesses in the vicinity of the project; and, whether the project will involve the relocation of a business and displacement of jobs from one local government in Wisconsin to another. The new rule requires the department to consider, in addition, the number of full-time jobs created and retained, and whether a project will result in redevelopment of a brownfield site or elimination of blight.

7. Under the current rule, the department may award CDBG funds to a community only for public facilities projects, economic development projects, public facilities economic development projects, and emergency situations arising from natural disasters and other catastrophic events. Under the new rule, the department may award a local government up to \$100,000 for an environmental audit of a brownfield site; and, up to \$500,000 for environmental remediation costs. The department may make a grant to a local government for a brownfield redevelopment project if the department determines that the project serves a public purpose; the local government has a citizen participation plan; the local government has adopted a brownfield redevelopment plan for the brownfield site; the project costs are reasonable; all sources of project financing are committed prior to the disbursement of the grant; the project will likely result in redevelopment of a brownfield site for commercial or industrial use; the project will likely retain or create jobs in this state; and, the local government will contribute at least 25 percent of the total cost of the project from funding sources other than grants from the federal or state government.

Contact Person

Thomas H. Taylor, Deputy Secretary, Department of Commerce, 608/266-3203.

Text of Rule

Pursuant to the authority vested in the Department of Commerce by s. 560.02(4), Stats., the Department of Commerce hereby repeals subchs. I, II and III of ch. DOD 6 and creates ch. Comm 108, interpreting 42 USC 5301 to 5319 and 24 CFR Part 570, as follows:

SECTION 1. Subchapters I, II and III of Chapter DOD 6 are repealed.

SECTION 2. Chapter Comm 108 is created to read:

Chapter Comm 108

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Subchapter I - General Provisions

- Comm 108.01 Purpose
- Comm 108.02 Eligibility
- Comm 108.03 Definitions
- Comm 108.04 National objectives
- Comm 108.05 Application manuals
- Comm 108.06 Distribution of funds
- Comm 108.07 Limits upon awards
- Comm 108.08 Construction

Subchapter II - Annual Public Facilities Competition

- Comm 108.09 Annual public facilities competition
- Comm 108.10 Distress indicators
- Comm 108.11 Needs assessment
- Comm 108.12 Ability to pay
- Comm 108.13 Leveraging

Subchapter III - Economic Development Program

- Comm 108.14 Economic development program
- Comm 108.15 Job creation and retention requirements
- Comm 108.16 Local revolving loan funds

Subchapter IV - Public Facilities Economic Development Program

- Comm 108.17 Public facilities economic development program
- Comm 108.18 Job creation and retention requirements

Subchapter V - Blight Elimination And Brownfield Redevelopment Program

- Comm 108.19 Blight elimination and brownfield redevelopment program
- Comm 108.20 Brownfield redevelopment project requirements; limits

Subchapter VI - Emergency Grant Program

Comm 108.21 Eligibility

Comm 108.22 Funding

Comm 108.23 Applications

Subchapter I -- General Provisions

Comm 108.01 PURPOSE. The purpose of this chapter is to set forth the criteria the department will use to administer CDBG funds that the department receives from the federal government under 42 USC 5301 to 5319 and 24 CFR Part 570.

Comm 108.02 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 and receive CDBG funds from the department under subchs. II, III, IV and V until the noncompliance has been resolved to the satisfaction of the department.

Comm 108.03 DEFINITIONS. In this chapter:

- (1) "Application" means an application for CDBG funds under this chapter.
- (2) "Blighted area" has the meaning set forth in s. 66.43(3)(a), Stats.
- (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. 66.431(bm), Stats.
- (5) "Brownfield redevelopment plan" means a plan adopted by a local government for the acquisition, clearance, reconstruction, rehabilitation and future use of a brownfield site.
- (6) "Brownfield redevelopment project" means any work or undertaking by a local government to acquire a 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 the brownfield site by a business for commercial or industrial purposes in accordance with an approved brownfield redevelopment plan.
- (7) "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 contamination.
- (8) "CDBG funds" means community development block grant funds awarded to the department by the federal government under 42 USC 5301 to 5319.
- (9) "Department" means the department of commerce.

(10) "Economic development program" means the economic development program administered under subch. III.

(11) "Eligible local government" means a local government that is eligible to apply for and receive CDBG funds under s. Comm 108.02.

(12) "Emergency grant program" means the emergency grant program administered under subch. VI.

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

(14) "Environmental pollution" means contaminating or rendering unclean or impure the 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.

(15) "Environmental remediation activities" means abating, removing or containing environmental pollution on a brownfield site, or restoring soil or groundwater on a brownfield site affected by environmental pollution.

(16) "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. "Full-time job" does not include a temporary, part-time or seasonal position.

(17) "Full value per capita" means the estimated market value of all taxable property in a municipality divided by the number of persons residing in the municipality.

(18) "Local government" means a city, village or town with a population of less than 50,000 that is not eligible to apply for or participate in the federal block grant entitlement program, and any county, other than an urban county as defined in 42 CFR 570.3, that is eligible to apply for and receive CDBG funds from the department under 24 CFR Part 570.

(19) "Median 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 U.S. department of commerce.

(20) "Metropolitan area" means a metropolitan statistical area, as established by the federal office of management and budget.

(21) "Municipality" means a local government that is eligible for CDBG funds under s. Comm 108.02.

(22) "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.

(23) "Non-metropolitan area" means any county not within a metropolitan area.

(24) "Public facilities economic development program" means the public facilities economic development program administered under subch. IV.

(25) "Public facilities program" means the annual public facilities program administered under subch. II.

(26) "Residential utility rate" means one of the following:

(a) 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.

(b) For areas not served by public water and sanitary sewer service, an estimate of equivalent costs as determined by the department.

Comm 108.04 NATIONAL OBJECTIVES A project funded with CDBG funds under this chapter shall meet one of the following national objectives:

(1) **BENEFIT TO LOW AND MODERATE INCOME PERSONS.** A project shall be considered to address the national objective of benefiting low and moderate income persons if it meets the criteria in 24 CFR 570.483 (b) (1), (2) or (4).

(2) **URGENT LOCAL NEED.** A project shall be considered to address the national objective of alleviating an urgent local need if a local government certifies and the department determines that all of the following requirements apply:

(a) The project is designed to alleviate existing conditions which pose a serious and immediate threat to the health, safety or welfare of the municipality or is required by an order of a state agency, federal agency or court of law.

(b) The existing conditions are of recent origin or became urgent within 18 months prior to the local government's application.

(c) The local government is unable to finance the activity, as measured by available general obligation debt capacity.

(d) Other sources of funding are not available on a timely basis.

(3) **PREVENTION OR ELIMINATION OF SLUMS OR BLIGHT.** A project shall be considered to address the national objective of preventing or eliminating slums or blight if it meets the criteria in 24 CFR 570.483 (c).

Comm 108.05 APPLICATION MANUALS. The department shall prepare application manuals which it shall update as needed. The application manuals shall set forth the application procedures, requirements and instructions for funding under the programs described in this chapter.

Comm 108.06 DISTRIBUTION OF FUNDS. (1) Out of each annual grant of CDBG funds from the federal government, the department may set aside up to 75% for the public facilities program, up to 75% for the economic development program, up to 10% for the public facilities economic development program, up to 10% for the blight elimination and brownfield redevelopment program, and up to 5% for the emergency grant program.

(2) The department shall report semiannually to the chairs of the economic development standing committees of the legislature on the status of the programs.

(3) Program income received by the department under ss. Comm 108.16 and Comm 108.20 shall be allocated for awards under the public facilities program, the public facilities economic development program, the economic development program, the blight elimination and brownfield redevelopment program, and the emergency grant program.

Comm 108.07 LIMITS UPON AWARDS. (1) The maximum amount of CDBG funds that may be awarded to any local government under the public facilities program shall be \$750,000 per calendar year.

(2) The maximum amount of CDBG funds that may be awarded to any local government under the economic development program shall be \$1 million per calendar year. The maximum amount of CDBG funds that may be borrowed by a business from any one or more local governments under the economic development program shall be \$1 million during any rolling 5-year period.

(3) The maximum amount of CDBG funds that may be awarded to any local government under the public facilities economic development program shall be \$750,000 per calendar year.

(4) The maximum amount of CDBG funds that may be awarded to a local government for a brownfield redevelopment project under subch. V shall be \$100,000 per calendar year for environmental audits and \$500,000 per calendar year for environmental remediation activities.

(5) The maximum amount of CDBG funds that may be awarded to a local government for a natural disaster or catastrophic event under subch. VI shall be \$500,000.

Comm 108.08 CONSTRUCTION. This chapter shall be liberally construed to effect the national objectives in s. Comm 108.04 and 24 CFR Part 570.

Subchapter II - Annual Public Facilities Program

Comm 108.09 PUBLIC FACILITIES PROGRAM. The department may award a grant to an eligible local government for a public facilities project based upon the department's evaluation of the comparative scores of all applications received from eligible local governments during each annual public facilities competition. The department's evaluation shall be established based upon the scoring system set forth in ss. Comm 108.10 to 108.13. No local government may submit more than one application during each annual public facilities competition. The maximum amount of points available under ss. Comm 108.10 to Comm 108.13 shall be 335 points. The department may establish a minimum score for funding during each annual public facilities competition.

Comm 108.10 DISTRESS INDICATORS. The department shall award up to 75 points to a local government based upon the department's evaluation of the documented level of distress, as measured by the net mill rate, the full value per capita, and the median household income in the area positively affected by the public facility project. The department shall award points as follows:

(1) **NET MILL RATE.** Scores shall range from 25 points for a local government with the highest net mill rate to 0 points for a local government with the lowest mill rate.

(2) **FULL VALUE PER CAPITA.** Scores shall range from 25 points for a local government with the lowest full value per capita to 0 points for a local government with the highest full value per capita.

(3) **MEDIAN HOUSEHOLD INCOME.** Scores shall range from 25 points for a local government with the lowest median household income to 0 points for a local government with the highest median household income.

Comm 108.11 NEEDS ASSESSMENT. The department shall award up to 100 points to a local government based upon the department's evaluation of the local government's documented need for the public facilities project. The department shall award points as follows:

(1) **URGENT HEALTH AND SAFETY PROBLEM.** A local government shall be eligible for at least 67 points but not more than 100 points if it demonstrates that the public facilities project is needed to alleviate an urgent health and safety problem or to engage in activities that are essential to the local government.

(2) **IMMINENT HEALTH AND SAFETY PROBLEM.** A local government that does not qualify under sub. (1) shall be eligible for at least 34 points but not more than 66 points if it demonstrates that the public facilities project is needed to alleviate an imminent health and safety problem or to engage in activities that will become essential to the local government in the near future.

(3) **LIKELY HEALTH AND SAFETY PROBLEMS.** A local government that does not qualify under subs. (1) and (2) shall be eligible for at least 1 point but not more than 33 points if it demonstrates that the public facilities project is needed to alleviate a likely health and safety problems or to engage in activities that are likely to become essential to the local government in the near future.

Comm 108.12 ABILITY TO PAY. The department shall award up to 60 points to a local government based upon the department's evaluation of the local government's ability to pay for the public facilities project, as measured by local residential utility rates and the local government's general obligation debt capacity. The department shall award points as follows:

(1) **RESIDENTIAL UTILITY RATES.** Scores shall range from 30 points for a local government with the highest residential utility rates to 0 points for a local government with the lowest residential utility rates.

(2) **GENERAL OBLIGATION DEBT CAPACITY.** Scores shall range from 30 points for a local government with the lowest ratio of available general obligation debt capacity to the cost of a public facilities project to 0 points for a local government with the highest ratio.

Comm 108.13 LEVERAGING. The department shall award up to 100 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. 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. The department shall award points as follows:

(1) **LEVERAGING: GENERAL.** Except as provided in sub. (2), scores shall range from 100 points for a local government that proposes to leverage one or more

dollars of non-CDBG funds for each dollar of CDBG funds to 0 points for a local government that propose to fund a project solely with CDBG funds.

(2) **ADDITIONAL POINTS: DISTRESS COMMUNITIES.** A local government that receives at least 50 points under sub. (1) shall be eligible for up to 50 additional points if the local government's median household income is below the statewide median household income. Scores shall range from 1 point for a local government with a median household income that is 1 percent below the statewide median household income to 50 points for a local government with a median household income that is 50 percent or more below the statewide median household income. The maximum score available under subs. (1) and (2) shall be 100 points.

Subchapter III - Economic Development Program

Comm 108.14 ECONOMIC DEVELOPMENT PROGRAM. (1) The department may award a grant to an eligible local government under the economic development program upon receipt and consideration of an application if the department determines all of the following:

- (a) The project serves a public purpose.
 - (b) The local government has a citizen participation plan as required by 24 CFR 570.486 (a).
 - (c) The project costs are reasonable.
 - (d) All sources of project financing will be committed prior to the disbursement of the grant.
 - (e) The project is financially feasible.
 - (f) The business that will benefit from the economic development grant has the economic ability to repay any funds that are loaned to the business.
 - (g) The project will likely retain or create jobs in this state.
 - (h) Funding for the project is unavailable from any other source on reasonably equivalent terms.
 - (i) The local government and the business that will benefit from the economic development grant will contribute at least 50% of the total cost of the project from funding sources other than the federal and state governments.
 - (j) The local government will use the CDBG funds for one of the following purposes:
 1. For a loan to a business that agrees to engage in job creation or retention activities under 24 CFR 570.483 (b) (4) designed to benefit low and moderate income persons.
 2. For job training, job placement, child care, transportation or other similar services eligible under 24 CFR 570.483 (b) (2) (v) designed to benefit low and moderate income persons.
 3. For other activities under 24 CFR Part 570 that meet the national objective of benefit to low and moderate income persons through job creation.
- (2) When making a determination under sub. (1) (a), 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.
- (g) The willingness of the business to work cooperatively with the department of workforce development, local job service offices and private industry councils to identify and offer full-time job opportunities to low to moderate income persons.
- (h) The availability of satisfactory collateral and personal guarantees to assure repayment of the economic development loan.
- (i) Whether the award will provide the business with an unreasonable competitive advantage over other similar Wisconsin businesses in the vicinity of the project.
- (j) Whether the project will involve the relocation of a business and displacement of jobs from one local government in Wisconsin to another local government in Wisconsin.
- (k) Whether the project will result in redevelopment of a brownfield site.
- (l) Whether the project will result in the elimination of slum and blight.

Comm 108.15 JOB CREATION AND RETENTION REQUIREMENTS.

(1) If a local government loans the CDBG funds to a business under s. Comm 108.14 (1) (j) 1, the business shall execute a loan agreement and other documents prescribed by the department, committing to repay the loan and to create and retain full-time jobs.

(2) The amount of CDBG funds awarded by the department to a local government for an economic development project may not exceed \$20,000 for each full-time job created and retained by a business. The amount awarded shall depend upon the department's consideration of the factors in s. 108.14 (2).

(3) The department may require a business that receive a loan 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.

Comm 108.16 LOCAL REVOLVING LOAN FUNDS. (1) An eligible local government that is awarded CDBG funds under this subchapter may retain program income from all grants awarded, subject to subs. (2), (3) and (4), to establish and capitalize a local revolving loan fund to promote further economic development. A local government that establishes a local revolving loan fund under this section shall administer and use the fund in accordance with all of the requirements established by the federal government and the department.

(2) (a) Subject to pars. (b) to (f) and subs. (3) and (4), the cumulative program income retained by a local government may not exceed:

- 1. \$100,000 for a local government with a population of 1,000 or less.

2. \$150,000 for a local government with a population of more than 1,000 but less than 2,000.

3. \$250,000 for a local government with a population of 2,000 or more but less than 4,000.

4. \$500,000 for a local government with a population of 4,000 or more but less than 10,000.

5. \$750,000 for a local government with a population of 10,000 or more.

(b) As an alternative to the cumulative program income limits in par. (a), a local government may elect to retain program income from grants received prior to January 1, 1987, in excess of the limits in par. (a). A local government shall make the election on a form prescribed by the department. Any local government that makes the election under this paragraph may not retain program income generated after May 1, 1996, from grants received on or after January 1, 1987 except as provided in sub. (3).

Note: The form required under this paragraph may be obtained at no charge from the Department's Bureau of Development Finance, P. O. Box 7970, Madison, WI 53707.

(c) All program income received by a local government in excess of the limits in par. (a) or (b), if the local government makes the election under par. (b), shall be paid to the department within 30 days of receipt. The department shall allocate such program income as provided in s. Comm 108.06 (3).

(d) A local government that will generate program income in excess of the amounts allowed in par. (a) or (b), if the local government makes the election under par. (b), shall not be eligible to retain the excess program income except as provided in sub. (3).

(e) All program income shall be used by a local government in accordance with 24 CFR Part 570 and the local government's contract with the department.

(f) Notwithstanding par. (a) and (b), the department may require a local government to return all program income to the department if the department determines, after notice and an opportunity for the local government to be heard, that any of the following has occurred:

1. The local government has failed to use the funds in accordance with the requirements established by the federal government or the department.

2. The local government has failed to comply with the administrative, underwriting, recordkeeping, reporting, auditing, closeout, payment, reimbursement or other requirements established by the federal government or the department.

3. The local government has failed to make any economic development loans with the revolving loan fund for a period of two consecutive years and, after receiving a notice from the department, fails to make any economic development loans for a period of 6 months.

4. The local government has discontinued its economic development program following the close out of its most recent contract with the department.

(3) (a) Any local government that desires to retain program income in excess of the limits established under sub. (2) (a) or (b) shall submit an application to the department setting forth the information as may be required by the department to justify the retention of 50% of the program income in excess of the limits.

Note: The form required under this subparagraph may be obtained at no charge from the Department's Bureau of Development Finance, P. O. Box 7970, Madison, WI 53707.

(b) When evaluating applications under par. (a), the department shall consider the following factors:

1. Whether the local government has complied with the administrative, underwriting, recordkeeping, reporting, auditing, closeout, payment, reimbursement or other requirements established by the federal government or the department.

2. The total number and amount of loans made by the local government using program income in the revolving loan fund.

3. The default rate on loans made by the local government using program income in the revolving loan fund.

4. The demonstrated need for an increase above the local government's program income limit.

(c) Any increase above a local government's original program income limit shall be made in increments equal to 25% of the limit established under sub. (2) (a) or (b).

(d) Local governments authorized by the department to retain excess program income may keep 50% of the excess program income received, subject to the program income limits in par. (c). The balance of such program income shall be paid to the department within 30 days of receipt.

(4) Any local government that establishes a revolving loan fund under this subchapter shall report semiannually to the department on the use of such a fund on forms and at such times as prescribed by the department.

Note: The form required under this paragraph may be obtained at no charge from the Department's Bureau of Development Finance, P. O. Box 7970, Madison, WI 53707.

Subchapter IV - Public Facilities Economic Development Program

Comm 108.17 PUBLIC FACILITIES ECONOMIC DEVELOPMENT

PROGRAM. (1) The department may award a grant to an eligible local government under the public facilities economic development program upon receipt and consideration of an application if the department determines all of the following:

(a) The project serves a public purpose.

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

(c) The project costs are reasonable.

(d) All sources of project financing will be committed prior to the disbursement of the grant.

(e) The project is financially feasible.

(f) The project will likely retain or create jobs in this state.

(g) The local government will use the CDBG funds for one of the following purposes:

1. For 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. For other activities under 24 CFR Part 570 that meet the national objective of benefit to low and moderate income persons through job creation.

3. For activities under 24 CFR 570.483 (c) that meet the national objective of preventing or eliminating slums or blight.

(h) 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.

(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) The willingness of the business to work cooperatively with the department of workforce development, local job service offices and private industry councils to identify and offer full-time job opportunities to low to moderate income persons.

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

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

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

(k) Whether the project will result in the elimination of slum and blight.

Comm 108.18 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 \$10,000 for each full-time job created and retained by the business. The amount awarded by the department shall depend upon the department's consideration of the factors set forth in s. 108.17 (2).

(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 Redevelopment Program

Comm 108.19 BLIGHT ELIMINATION AND BROWNFIELD REDEVELOPMENT PROGRAM. (1) The department may make a grant to an eligible local government for a brownfield redevelopment project if the department determines all of the following:

- (a) The project serves a public purpose.
- (b) The local government has a citizen participation plan as required under 24 CFR 570.486(a).
- (c) The local government has adopted a brownfield redevelopment plan relating to the brownfield site.
- (c) The project costs are reasonable.
- (d) All sources of project financing will be committed prior to the disbursement of the grant.
- (e) The project will likely result in redevelopment of a brownfield site for commercial or industrial use.
- (f) The project will likely retain or create jobs in this state.
- (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 or state government.

(2) When making a determination under sub. (1), the department shall consider 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. Comm 108.04 (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 number of full-time jobs that are likely to be retained or created.
- (g) The wages and benefits that will be paid.

Comm 108.20 BROWNFIELD REDEVELOPMENT PROJECT REQUIREMENTS; LIMITS. (1) 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.

(2) The department may require a local government and any business or nonprofit corporation that receives CDBG funds under this subchapter to execute a brownfield redevelopment agreement and other documents prescribed by the department, committing to the redevelopment of a brownfield site.

(3) The department may require a local government to pursue recovery of environmental remediation costs from responsible parties and to reimburse the

department for a proportionate share of the CDBG funds granted by the department under this subchapter.

(4) The amount of CDBG funds awarded to a local government for an environmental audit of a brownfield site may not exceed \$100,000. The amount of CDBG funds awarded to a local government for environmental remediation of a brownfield site may not exceed \$500,000.

(5) All program income received by a local government in connection with loans to businesses or nonprofit corporations under this subchapter shall be paid to the department within thirty days of receipt.

Subchapter VI -- Emergency Grants

Comm 108.21 ELIGIBILITY. (1) The department may award a grant to an eligible local government under this subchapter upon receipt and consideration of an application if the department determines all of the following:

(a) The local government 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 subchapter II.

(f) The local government will contribute at least 25% of the total cost of the project from funding sources other than grants from the federal or state government.

(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.

Comm 108.22 FUNDING. (1) The maximum amount of CDBG funds that may be awarded to any local government under this subchapter shall be \$500,000 for each natural disaster or catastrophic event.

(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.

Comm 108.23 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.

(e) Evidence that the local government has matching funds to cover at least 25% of the total cost of the project.

(f) A discussion of alternative remedies available to the local government.

(g) Any other information that the department considers relevant.

(END)

Pursuant to s. 227.22 (2), Stats., these rules shall take effect on the first day of the month following publication in the Administrative Register.

August 8, 1997

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 West Wilson Street
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 97-037

RULE NO.: DOD 6 and Comm 108

RELATING TO: Community Development Block Grant Program

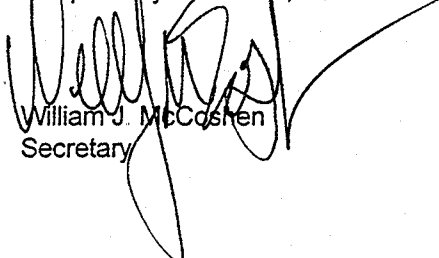
Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,


William J. McCoshen
Secretary

